

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

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

April 13, 2006

ROLL CALL

Ms. Stevens: I would like to call the April 13, 2006 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Greg Charnes, Derek Dunigan, Roger Herrin, Bill Jeffers, Joe Kiefer, Lynn Lowe, Cheryl Musgrave, Phil Offerman, Bill Pedtke, Stacy Stevens

Members Absent:

Mike Lockard, Jack McNeely, Curt Wortman

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

Ms. Stevens: For those of you who have not been here before and are not familiar with the process, we are generally a recommending body that meets the second Thursday of each month. We recommend zoning decisions to the City and County legislative bodies. However, the Area Plan Commission is the sole authority on subdivisions.

REZONINGS

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 City rezonings considered tonight will be heard by the City Council on May 8, 2006 at 5:30 p.m. The County rezonings considered tonight will be heard by

the County Commissioners on April 18, 2006 after the regular 3:30 County Commission meeting in Room 301.

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

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

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

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

The following petition will not be heard tonight:

Docket No: VC-6-2006 Mannon Walters, Jr. – 6015 Heckel Road - WITHDRAWN

If you are here on this petition, you may wish to leave at this time. Now let's move on to the first rezoning item on the agenda.

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

COUNTY REZONINGS

Docket No: 2006-10-PC VC-5-2006 Petitioner: Sunset Evansville, LLC

Address: (Complete legal on file.) 1800 St. George Road

Nature of Case: Change from an agricultural zone to a C-2 zone with a use and development commitment.

Mr. Mills: Marco DeLucio is representative for Sunset Evansville, LLC and this request for a change in zoning from Agricultural to C-2 with a use and development commitment for a portion of their property located at 1800 St George Road. This site is on the north side of St. George Rd, north of the intersection with Hitch and Peters Road. This petition was originally filed as a request to rezone 8.547 acres from Agricultural to C-4 with a use and development commitment. The petition was heard at the March 9, 2006 Area Plan Commission hearing, and was recommended for approval (11 YES – 1 ABSTENTION.) Subsequent to the Area Plan Commission hearing, the petitioner amended the petition, adding approximately one acre to the legal description of the site proposed for rezoning. This is now a request to rezone 9.66 acres to C-4 with a use and development commitment. The commitments of the use and development commitment are unchanged. This site is designated on the Future Land Use map in the Comprehensive Plan as a park or cemetery. The parcel is completely interior to the cemetery, and this rezoning is for a single added use which is comparable and suitable to the existing cemetery and mausoleum use on the site.

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

Mr. DeLucio: I don't have much to add to that. As Mr. Mills indicated, the rezoning request was approved last month. Following that meeting, there were some change in design plans that shifted the parking around a little bit that required us to add an additional acre. The area that was added was the little square at the top north corner. That was what was added. Parking will be extended through a part of that area. The parking was shifted from what was the west side of the property to the north side of the property. It is being constructed on a hill and just required a different kind of configuration. So that is why we had to come back and add this additional acre to the property. We did get a couple of calls after last month's meeting with concerns of the neighbors in Melody Hills about the woods that separates the two parcels. They wanted to know if the woods would come down. A little of the woods will come down, approximately 150 feet. There is over 300 feet now between the area being rezoned and the Melody Hills line; but there will still be 150 feet of woods between the two parcels. So we don't think there is going to be any view problems involved at all. There will be a reflecting pond in the middle of that property that comes off the edge so it will be woods followed by a reflecting pond in the middle. Dave Ellenstein is here this evening to answer any questions you might have. Thank you.

Ms. Stevens: Are there any questions? Are there any remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Charnes, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Mr. Offerman, Mr. Pedtke, Ms. Stevens

Nays: None

Abstention: Ms. Musgrave

There being 9 affirmative votes and 1 abstention, Docket No: VC-5-2006 goes forward with a recommendation for approval.

Docket No: 2006-12-PC VC-7-2006 Petitioner: Herman & Kittle Properties, Inc.

Address: (Complete legal on file.) 2810 Mesker Park Drive

Nature of Case: Change from an R-1 zone to a C-4 zone.

Mr. Mills: Herman & Kittle Properties is requesting a change in zoning from R-1 to C-4 for the property located at 2810 Mesker Park Drive. This is a 0.17 parcel located at the northwest corner of Mesker Park Drive and Diamond Avenue. Diamond Avenue is a primary arterial/controlled access thoroughfare, leaving the only access available to this site from Mesker Park Drive. There is an existing commercial access drive north of this site on the adjacent C-4 zoned land. The existing access must be utilized for the entire site, including this small expansion area. Site Review will address compliance with access upon submission of plans for development of the site. Adjacent north and west of the small home site is existing commercial development. The small site is being merged with the adjacent C-4 site under the same ownership. New or changed use of this site will require review by Site Review Committee and upgrade of access and parking to current commercial standards. The site is located within an area designated for commercial development on the Comprehensive Plan Future Land Use map. This 0.17 acre site is being added to the 8 acre site rezoned in 1986 which is adjacent north and west of this site. This proposed change in zoning and use is consistent with the Plan.

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? (Ms. Scott has been sworn in.)

Ms. Scott: My name is Erika Scott. I am with Herman & Kittle Properties. We come before you to ask for a rezoning of a very small parcel at the intersection of Mesker Park Drive and Diamond Avenue. A little background about our company, we are an Indiana-based residential and commercial developer. We also do our own construction and long term management of the properties that we own. We do multi-family housing and self-storage development. It is a self-storage development we are looking to do on this parcel. I want to pass out some company information. We have about 60 developments in four states, Indiana, Ohio, Michigan and Illinois currently. Most of our properties are in Indiana. We currently have eight self-storage developments and we are looking to expand. I don't have anything to add to the comments. This does seem to fit with the Comprehensive Plan. I would be happy to answer any questions.

Ms. Stevens: Are there any questions?

Mr. Kiefer: MIC TURNED OFF-INAUDIBLE

Ms. Scott: This is one type we do. What we want to do at the site, and because of the slope down hill, some of the properties are completely perimeter fenced in buildings where we have buildings on each side. So it is kind of a fortress style. Because of the slope, we will probably only have a partially fortress style. But we generally try to use either wrought iron fencing or masonry as the economics of the development allow. But we will through all that with your site plan approval.

Mr. Jeffers: If this Board were to not approve your rezoning, would you proceed with the development of the rest of the acreage?

Ms. Scott: That is something we would have to look at. I would anticipate we would because the other parcel that is contiguous with this is a large parcel. It does have a commercial zoning already.

Mr. Jeffers: You are familiar with it. It has been an eyesore for a couple decades. If we rezone this tonight, how soon can we anticipate it will cease to be an eyesore?

Ms. Scott: We are working with the owner to close some time in late July. After we close, we like to start construction within six to eight weeks.

Mr. Jeffers: All that would be cleaned up?

Ms. Scott: We plan to demolish the white house on the corner, which is under rezoning today, and also the log cabin and the other out buildings on the property.

Mr. Jeffers: And all the big heaps of stuff that has been out there 20 years?

Ms. Scott: We plan on getting rid of that stuff.

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

Ayes: Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Mr. Offerman, Mr. Pedtke, Mr. Charnes, Ms. Stevens

Nays: None

Abstention: Ms. Musgrave

There being 9 affirmative votes and 1 abstention, Docket No: VC-2006-7 goes forward with a recommendation for approval.

Docket No: 2006-13-PC VC-8-2006 Petitioner: Jack Tubbs, II, Mystic Creek, LLC
Address: (Complete legal on file.) 3030 N. Green River Road
Nature of Case: Change from an agricultural and C-4 zones to a PUD (planned unit development) zone.

Mr. Mills: Jack Tubbs is the representative for Mystic Creek, LLC and this request for a change in zoning from Agricultural and C-4 to P.U.D., or Planned Unit Development for the property located at 3030 N Green River Road. This proposed residential development is a 8.198 acres site located west of Green River Road, between Theatre Drive and Spring Valley Road. The PUD zoning classification is designed to allow for more flexible regulations while preserving the purpose of the zoning ordinance. In return for allowing more flexible zoning regulations, the developer is required to preserve common open space or any environmentally sensitive areas. The subdivision and building plans are a part of the Planned Unit Development rezoning ordinance. Applicants are requesting approval of a planned unit development for a 20-lot residential subdivision of two-family homes: Mystic Bridge P.U.D. The plans for the development include a 1.9 acre lake and water detention area and four separate green space areas totaling 0.86 acre. The preliminary plans were reviewed by the Site Review Committee at their meeting on January 30, 2006. The Vanderburgh County Commissioners approved a sidewalk waiver for the site at their meeting on March 7, 2006. The lots within the development vary in size from 7,501 sq ft. to 9,184 sq ft. The layout of typical house designs indicate that a 4,536 sq ft duplex residence is planned on each of the twenty lots. Setbacks are detailed on each lot, and vary from 5' to 16' front yard setbacks, 8' to 15' rear yard setbacks, and 3.5 feet side yard setbacks. Development standards including height, patios, fences, etc. are addressed within the covenants submitted as part of the development plans. The timetable for completion of the project indicates that the last duplex unit is expected by December, 2008. Access to Green River Road for this new residential subdivision development is from a proposed extension of Mystic Creek Drive. The roadway/access is included as part of the Planned Unit Development and will be dedicated to the public and maintained by the County if accepted. The proposed front building setbacks do not give adequate room for vehicles to be parked in the driveways without encroaching into the right-of-way and/or the street. The reduced roadway width of 24 feet will reduce maneuverability of traffic if on-street parking is allowed. Site distance at the intersection of Mystic Court and Mystic Creek Drive will be limited due to the allowed 5-foot building setback line for Lot 20 along Mystic Creek Drive. Subdivision Review Committee will address compliance with all code requirements upon submission of final subdivision plans for the development of the site. Staff will address compliance with individual lot development upon submission of plans for construction of the residences on each lot. The Future Land Use 2025 Map of the Comprehensive Plan designates commercial strip development along the north Green River Road corridor in this location. The area adjacent west of the commercial development is designated for residential development. This is a request for rezoning to allow a residential planned unit development adjacent west of the Mystic Creek commercial subdivision. This high-density residential development will serve as a buffer between the commercial development to the east and the single-family residential to the west. The proposed land use is in compliance with the Comprehensive Plan.

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. Shofstall: My name is Justin Shofstall with Easley Engineering. I would like to add to Brad's comments that, on March 7, 2006, at the County Commission meeting, both road plans and the drainage plans were given final approval by the County Commissioners. As far as the intentions on this planned unit development, it is the duplex building for each lot for two families to reside in. The base price on the homes is around \$150,000 and up. We do have a substantial amount of room between each property from the end of our development and any pavement with streets with lake and additional landscaping which I do have the plan and requirements and have added that to the package. Back in March, I only received a handful of calls about the development and that was mainly due to this. This is the March 13 Courier and Press, after we had about eight inches of rain. Green River Road was flooded. There was concern that some residents who had not lived there for more than nine years were not present for the 1997, 1996 floods, the 1984 and 1982 floods, I fielded several calls on that, and submitted a report to John Stoll and Bill Jeffers. Mr. Jeffers did some follow-up on that because of some calls he received. I have copies of the e-mail he provided to adjacent home owners regarding that. The findings are that, being in the floodplain, the floodplain acted as it is supposed to, to receive all the floodwaters and to hold back all those waters. I would be happy to answer any questions.

Ms. Stevens: Are there any questions? Are there any remonstrators? (None.)

Mr. Herrin: You were saying comments about parking...

Mr. Mills: If you look in the packet, there was a letter from EUTS, which is now the Evansville Metropolitan Planning Organization, which addressed those concerns, which I mentioned in my opening remarks. It is going to be a 24 foot wide street, which is adequate for two-way travel, but is you have residents parking on the street, that will reduce the efficiency of traffic flow and we had a concern about the location of the driveway at Lot 20 at the proximity of what will be the new intersection. If you would like to address that and how you feel that would work.

Mr. Shofstall: As far as the parking, we do have about 22-24 feet from the closest building face to the back of the curb. As far as restrictions and covenants, there is no on-street parking being allowed due to the fact that we are asking for the reduced road width. As far as with access points with Lot 20, at that portion of Mystic Creek Drive, it is 29 feet in width from the back end of Mystic Creek subdivision through the Mystic Creek Drive and Mystic Creek Court intersection. So as far as that access with Lot 20, the southerly most access, that is leaving from the intersection to the southerly edge of that driveway approximately 20+ feet.

Ms. Stevens: On that 20 feet, are those units designed for a one car or two car garage?

Ms. Shofstall: It would be a 20 foot wide garage door, so it would be a two car garage.

Mr. Kiefer: I am not real familiar with PUD's, but does the County accept roads in a PUD, or is that owned by the development?

Mr. Harrison: I don't know what the proposal is.

Mr. Mills: It has been approved, but it would have to be inspected by the County Engineer and he would recommend acceptance or not.

Mr. Jeffers: With regard to the same question, the parking restriction, is that parking a vehicle on the street, no vehicle shall be regularly or habitually parked on the street. It is not an absolute restriction. So a visitor might not be considered a regular parker.

Mr. Shofstall: I would agree with that. It was probably the intention to allow that if someone was having company and there were a multitude of cars, then that would be a potential. INAUDIBLE PORTIONS....

Mr. Jeffers: So in those cases, would there be sufficient width if all the cars were parked on one side, would there be sufficient width for an emergency vehicle?

Mr. Mills: There should be.

Mr. Jeffers: Are there any restrictions against youth?

Mr. Shofstall: I don't believe there are any restrictions on youth or age. But as far as the marketing readout on that, as far as what they are going to be selling it to and who isINAUDIBLE...is more of your new retirees and your fresh young couples.

Mr. Jeffers: So I was thinking in Roger Herrin's position, you don't anticipate school buses will be coming down and turning around.

Mr. Shofstall: No, this is not intended for school buses to come down and through.

Mr. Jeffers: My last question is with regard to the period of the restrictions is 25 years and can be extended in successive periods of 10 years if executed by a majority of owners. Yet it seems the County would be interested in extending the parking restriction with or without a majority of the owners.

Mr. Shofstall: I would agree with that.

Mr. Jeffers: Can that restriction be amended after the vote?

Mr. Harrison: That is something the Commissioners may want to address.

Mr. Jeffers: So after 25 years, there may be parking on the street?

Mr. Harrison: Technically in the County, I don't think you are allowed to park in front of your house anyway. I think there is an ordinance for that.

Mr. Jeffers: So that could be enforced with or without that covenant.

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

Ayes: Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Mr. Offerman, Mr. Pedtke, Mr. Charnes, Mr. Dunigan, Ms. Stevens

Nays: None

Abstention: Ms. Musgrave

There being 9 affirmative votes and 1 abstention, Docket No: VC-8-2006 goes forward with a recommendation for approval.

CITY REZONINGS

Docket No: 2006-14-PC R-2006-6 Petitioner: Mitchell Meece

Address: (Complete legal on file.) 601 Jackson Avenue

Nature of Case: Change from an R-2 zone to an R-3 zone.

Mr. Mills: Mitchell Meece is requesting a change in zoning from R-2 to R-3 for his property located at 601 Jackson Avenue. This is a 0.15 acre lot located at the southeast corner of Jackson Avenue and Garvin Street. Mr. Meece is requesting this change in zoning to R-3 to bring the existing use of the site into conformance with current zoning code requirements to facilitate the sale of the property. The R-2 district is limited to one single-family residence or one duplex residence. Information submitted by the Mr. Meece indicates that there are three residential units in this building. Research by staff indicates that to be certified as a legal nonconforming use, the three units would have had to have been established prior to the zoning change from multi-family to R-2 around 1958. Assessors records indicate that the residence on this site was constructed in 1909, and the Mr. Meece indicates that three units have existed at this address since at least 1975. The small size of the lot would limit the residential density to the existing use only; no additional units are permitted without the provision of adequate off-street parking for all units. Access to the gravel parking area in the rear yard is from the public alley at the rear of the lot. This site is in an area designated by the Comprehensive Plan as an area of residential development. This step up in zoning to R-3 for this 0.2 acre site is consistent with the residential plan for the area. Multi-family uses are considered residential development.

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. Meece has been sworn in.)

Mr. Meece: My name is Jerry Meece. I am appearing for my son, Mitchell. I live in Newburgh at 1113 Phelps Drive. I bought this property in 1990. The State conveyed it to my son and his wife in 2000. Since then, we have been trying to keep it cleaned up enough to sell it. I researched the R-3 usage through the city directories. Starting in 1975, three names appeared as tenants. Before that, it was one name. So that is where I come up with the fact that it has been used as a tri-plex for 31 years. It did not come up when I bought it or conveyed it to my son because they were both cash transactions. When I had the sale for it a few months ago, even though it was \$15,000, these folks went to the bank to get a loan and somebody checked the title and discovered it was R-2, which was non-conforming. So I initiated the rezoning petition and got most of my money involved, but the sale fell through. So here I am trying to get it ready so I can sell it if I get another buyer.

Ms. Stevens: Are there any questions? Are there any remonstrators? (None.)

Mr. Jeffers: I wanted to ask Brad, if you look at the staff field at the bottom of the page, INAUDIBLE...

Mr. Mills: What that has to do with is the current code requires that any new construction or any additions, then the parking requirements would have to be met. Based on the small size of the area that is available for parking, they would not be able to expand that and meet the ordinance. So they would have to apply for a variance for parking because there wouldn't be sufficient space.

Mr. Jeffers: If they would tear this dwelling down and build what might be built on R-3, they wouldn't have sufficient parking?

Mr. Mills: It is possible. It depends on how they design it. If they were to take the existing building and add on to it to make more room, then they wouldn't have sufficient space.

Mr. Jeffers: But you are okay with this parking?

Mr. Mills: Yes, with the way it is now.

Mr. Meece: This is a double lot. There is probably parking there for 12 cars off-street. The house was built on two lots. It was fairly common in that era because lots were only 25 feet wide.

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

Ayes: Mr. Jeffers, Ms. Lowe, Ms. Musgrave, Mr. Offerman, Mr. Pedtke, Mr. Charnes, Mr. Dunigan, Mr. Herrin, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

There being 9 affirmative votes and 1 abstention, Docket No: R-2006-6 goes forward with a recommendation for approval.

Docket No: 2006-15-PC R-2006-8 Petitioner: Jack Tubbs, President, TQM Development
Address: (Complete legal on file.) 2233 W. Franklin Street
Nature of Case: Change from a C-4 zone to a C-2 zone.

Mr. Mills: Jack Tubbs is the representative for TQM Development Corp. and this request to downzone the property located at 2233 W. Franklin Street from C-4 to C-2. This is a 0.17 acre lot located at the northeast corner of Franklin Street and 12th Avenue. The existing commercial building on this site occupies nearly the entire site. Access and parking will be addressed by Site Review upon submission of plans for the establishment of residential use on the second floor of the building. Apartments require 1.5 spaces for each one-bedroom unit; 2 spaces for each 2-bedroom (or larger) unit; plus one space for each 3 units for visitor parking. This is an existing retail building with no on-site parking. The absence of parking may be considered a legal nonconforming characteristic of the use of the building, as the building was constructed in the early 1900's, prior to the establishment of parking requirements in the zoning ordinance. The step-down in zoning classification to allow the loft apartments on the second floor of the building decreases the amount of required off-street parking that would be required for the site under today's zoning code, allowing the proposed change-of-use of the second floor to proceed according to the provision in the ordinance which states that the structure may be changed to another use provided that the new use is equally appropriate or more appropriate to the district than the existing nonconforming (characteristic of) use. Once the apartments are established in the upper floor of the building, a commercial/retail use may not be reestablished on that second floor. The first floor of the building remains retail. Mr. Tubbs is proposing to downzone this site to allow both the existing commercial use and the conversion of the second floor to allow residential, a use not permitted within the C-4 district. This site is within an area designated as commercial on the 2015 Future Land Use Map within the Comprehensive Plan. The surrounding area is a mix of commercial, institutional, and high-density residential uses. This downzoning to C-2 for establishment of "loft apartment(s)" consistent with the overall development plans for the area.

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

Mr. Tubbs: My name is Jack Tubbs with TQM Development, Newburgh, Indiana. What I would like to add to the report is what we are doing with the old Risley building is essentially rehabbing it and converting it back to its glory during the 1900's when it used to be the Westside Hardware. The downzoning from C-4 to C-2 is to come into compliance. We want to build three loft apartments on the second level. The intention on

the first level right now is to build it white box commercial, anticipation of office space, retail, or possibly a restaurant. With that, I will entertain any questions.

Ms. Stevens: Are there any questions?

Mr. Herrin: We were discussing this at work today. We were trying to remember what the name of that was before that.

Mr. Tubbs: Near as I could tell, my great-grandfather moved from Madisonville, Kentucky to that. He verified that it was originally the Westside Hardware.

Mr. Herrin: But there was a name that went with that.

Mr. Tubbs: We haven't been able to find that out.

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

Ayes: Ms. Lowe, Ms. Musgrave, Mr. Offerman, Mr. Pedtke, Mr. Charnes, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

There being 9 affirmative votes and 1 abstention, Docket No: R-2006-8 goes forward with a recommendation for approval.

Docket No: 2006-16-PC R-2006-7 Petitioner: Connie S. Engelbrecht

Address: (Complete legal on file.) 600 Christ Road

Nature of Case: Change from an R-1 zone to a C-4 zone with a use and development commitment.

Mr. Mills: Connie Engelbrecht is requesting a change in zoning for a 40 acre part of the property located at 600 Christ Road. This is a request to rezone a site at the northeast corner of Christ and Weaver Roads from R-1 to C-4 with a use and development commitment. Ms. Engelbrecht is requesting the rezoning to allow an expansion of the commercial use within the existing orchard property. The use and development commitment which is included with this rezoning request eliminates many commercial uses typically allowed in the C-4 classification, allowing uses identified by Ms. Engelbrecht as possible future commercial activity on the site. There is an existing entrance drive for the produce market located just north of the intersection on Weaver Road. The existing entrance drive is substandard to current commercial development standards, and must either be upgraded and/or relocated to accommodate any new, expanded commercial use of the site. Site Review Committee will address access at the time of submission of development plans for the site. The Comprehensive Plan Future Land Use map

designates this approx. 80 acre orchard area as residential and agricultural. The surrounding area is completely residential. The orchard has been in existence at this location since prior to annexation into the City of Evansville in 1961 and prior to the application of the R-1 zoning classification for the site. This is a request to allow a change in zoning to C-4 with a use and development commitment for a 40 acre part of the orchard. Ms. Engelbrecht has indicated a plan for future expansion of the current use to include a possible restaurant and other agri-tourism commercial uses related to the produce grown on the site. Commercial zoning is required to accommodate any new or changed use on 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. Morley: My name is Jim Morley. Connie Engelbrecht is here with me. The Engelbrechts bought the property in 1918. Connie's mother and father are now dead. The estate went through an arrangement split. Brother Bill took the property at Newburgh. Connie and her sister have this property here. It is Connie's objective to continue the tradition of Engelbrecht Farm just as it is. In the process of trying to figure out how to bring this into compliance so that Connie would be able to borrow money on the property. An existing non-conforming use can keep on going. But if it burns down, or gets destroyed, then it raises issues when you try to rebuild it. So we are trying to bring it to a zoning use that would insure that if something happens out there, she will not have to come before you on an emergency basis and try to deal with rezoning at that point. I went through all of the C-4 uses and tried to mark out everything that is not out there. Obviously, she uses chemicals to spray trees. They have food and produce. It is a store. That is Connie's intention. A further thing she wants to do is try to get more use of the interaction between the community's children with activities at the orchard. They have started some of that. It is her intention to try to expand that. Also she wants to try to offer picnics at the orchard. So she wants to enlarge the kitchen and perhaps be able to offer a picnic on the porch at the orchard. So those are the things she has in mind. I would like for Connie to come up.

Ms. Engelbrecht: This is a very deep thing for me because my grandfather started the farm and our store in 1919. My father and grandfather farmed the airport and Whirlpool properties when those were not even in existence. It has been agricultural. I have three small children who go to Stringtown School and Thompkins. They bring a lot of kids up to the orchard. My mother started the school tours over 32 years ago. I have been doing them for about 18 years. We would like to add an education room in the existing barn, and also use it for private birthday parties. We would do catering and hayrides. Hayrides were something my grandfather did. When I went to get a loan, I found out that it is non-conforming and they don't want to lend money on non-conforming. The reason for the C-4 status is because our stuff is outside, our plants, our apples. We marked out most of the stuff. One of the things that upset me, the newspaper misread part of that. The automotive service station is marked off to not happen. I want to make sure that is straightened out. Another thing is, agri-tourism is new. It is not something you hear every

day. Not everybody knows who Huber's Orchard is and Floyd Knobs. But Floyd Knobs is a 212 year old operation. It's 250 acres. It's five families. They have one of the most awesome sites for agricultural as far as trees, vineyards that you could ever have. They do a lot of school tours too and a lot of education tours, even for people in my business. The first phase is simply to fix what I have. I'm sure there is some concern in the neighborhood, why is it going down hill? We need a new roof. The other thing in phase one is extending our porch and enclose it. The buildings that are here, we need to get things cleaned up. All that costs money. I am land poor now because I bought the business from my brother and I gave my sister all the other funds and I am buying her out. I have five years to do that. So I have to come up with a way to generate more money. The apples are our main thing. For the neighbors who are close, the bottom acreage, those trees are new. I have no intention of taking one tree down at the present. The only other thing, we want to update our bathrooms. That barn was constructed in 1923 to 1927. There are two huge lofts. But it will be slow as we can develop it in that way.

Ms. Stevens: Are there any questions?

Ms. Musgrave: I know we have gone over this ground before, but this is a question about the form of the use and development commitment and the fact that it was not drawn up by an attorney. Is that still binding?

Mr. Harrison: Yes.

Ms. Engelbrecht: It was reviewed by Brian Carroll.

Mr. Harrison: People can come into the Area Plan office and get the form and they can doctor something up and submit it. I think that is done quite often.

Ms. Stevens: Are there any remonstrators?

Mr. Crowley: My name is Merle Crowley, 5028 Harvest Court, on the corner of Harvest Court and Christ Road. Part of our concern is the traffic now on Christ Road. Christ Road is not well maintained by our City. But if they are going to have restaurants and things, I know she is not talking about an automotive service station, but that was in this originally.

Mr. Harrison: At the very top, it says it shall be limited to the following. Then it says the following shall not be permitted. Then if you go to line six, that means that all those are not permitted. So they can't have all those in six.

Mr. Crowley: But we can have the party house, theater, skating rink, dance hall, tavern. But we are concerned about the traffic and what it might do. We like the orchard and what they have done in the past. I didn't know why they would have to go to a C-4 from where they are. Is there a lesser commercial recommendation. What if Connie doesn't make this and wants to sell the ground to someone else and they have a C-4 zoning? That is much more valuable than an R-1.

Mr. Harrison: It is still limited to these things here. I think she indicated her main concerns, because she has things outside.

Mr. Mills: C-4 is required to have outside sales, which is what she has. So that is a requirement.

Mr. Harrison: But if it is approved by the City Council, this would run with the land, even if it is sold.

Mr. Crowley: So it would still be a C-4.

Mr. Mills: With those limitations in the use and development commitment. Any new buyer would still have to maintain the same things. They still couldn't do an automobile repair place for example.

Mr. Jeffers: I would draw your attention to the fact that all the commitments are binding on this petitioner or anyone who buys or inherits this property. They not only run in favor of the Area Plan Commission, but run in favor of the resident owners within one mile of the real estate. So if you own property within one mile of this rezoning, you could take legal action if you thought they were operating outside of these restrictions.

Mr. Crowley: Thank you.

Mr. Koch: My name is Dan Koch. I represent 5400 Weaver Road, which is my father's place. I don't want to be a remonstrator, just a concerned citizen in regard to we welcome all business to expand. The only concern we have is what will the City do for Weaver Road as far as expanding traffic. I don't know if you have gone down Weaver Road, but it is difficult now for two vehicles to pass. I was concerned about what the City would do for Weaver Road.

Mr. Harrison: Your comments are on the record. There is a City Councilman sitting over there, Mr. Kiefer. He represents the whole city.

TAPE CHANGE

Mr. Kiefer: You may want to talk with the City Engineer because he would probably be involved with those discussions. Then also you may want to contact, as well as talking to me, Angela Walden, who is the council person for that district. We can get together and talk about this in more detail.

Mr. Koch: I don't know if you are familiar with Weaver Road at the top of the hill there, but teenagers like to do hill jumping and if you are coming up, there have been some accidents there. I am concerned about what can be done to Weaver Road.

Mr. Harrison: Are you talking about there at Senate?

Mr. Koch: Go further south, there at the entrance to Engelbrecht at Weaver Road.

Mr. Harrison: Maybe Mr. Kiefer would be nice enough to give you his card. Then you can call him sometime.

Mr. Buck: My name is Alfred Buck. I own property in Orchard Parke Subdivision. I am concerned about several things. Have you gone up Christ Road to where it intersects with Stringtown Road and seen how dangerous it is at that intersection? The other outlet is at Kentucky and Christ Road. Kentucky Avenue is pretty much a thoroughfare. That is a dangerous intersection. If there is going to be considerable additional traffic in that area, then there needs to be something done with the roads in that area. Another question, why would it take 40 acres to do what they are asking to do now? Probably their commercial aspect is sitting on an acre of property. Another thing that would need to be done, if you leave the orchard, you are taking your life in your hands if you turn to the left and go towards Kentucky Avenue. It is on a blind curve. A few years ago, a pedestrian on that road was killed. So you have some problems to consider if you desire to increase the traffic on that thoroughfare.

Mr. Hicks: My name is Ed Hicks. I live on the corner of Evans and Christ Road. It was alluded to by the presenter that changes would be made to the current main entrance and exit from the commercial venture that is there now. Nothing I have heard has indicated how that change would be made which would also have bearing on Mr. Buck's comment about the danger of people exiting onto Christ Road from Weaver. So I would ask if there is any elaboration as to how this dangerous area is planned to be approached.

Mr. Morley: Where you have an "S" curve down at Christ Road, Connie's has indicated that if the City wants to do a project there to change that, that she would donate additional right-of-way if they want to do work. What we tried to lay out here is not some huge change in what is going on in this traditional farm business. We are not anticipating a lot of people on Christ Road. If this were a subdivision, there would be a lot more people. I don't anticipate that those things are issues relative to the farm. There are some issues relative to intersections of Christ and Stringtown Road that the City probably has on their list of things they are looking at. But what you see with Connie is what we are talking about. We don't have some huge plan that will generate thousands of cars.

Mr. Jeffers: You indicate Connie would be willing to donate right-of-way if the City wanted to do the work. This is a rezoning of 40 acres requested by a single owner commercial operator. This is not a perspective subdivision where there would be several commercial lots within the 40 acres. It is a single owner versus leased lots or individual lots. If someone else wanted to come in there and build an arcade or a dance hall or something, and they weren't a part of the same ownership, then they would have to lease a lot, or could they operate under the umbrella of this?

Mr. Mills: The property can be used for commercial use by different operators under a single land owner. So the answer is yes, she could lease out an acre to someone to put up a dance hall. I don't think that is her intent in any way.

Mr. Jeffers: Without any further subdivision, a pest control place could come in here and lease an area...

Mr. Mills: Correct. I would like to support her a little bit on this. She came to us and talked to us and we were the ones that recommended she do the larger area and to square it off. The reason behind that is, as she comes through and wants to do these large Fall events where they come and pick apples and have the kids come out and have parking, is we wanted to have the parking on the commercial property. As she had shared with us, a portion of the bottom of the picture is now planted in new trees and as she goes through, she rotates that crop and will have parking in the grass areas. One year it might be close to the road and the next year it might be close to the house. So that was the logic in picking the larger area. I believe it is not her intent at all to subdivide or lease out parcels, but obviously things can change and people can sell property.

Mr. Harrison: But if she wants to subdivide, she has to come back.

Mr. Jeffers: They are offering to donate right-of-way if the City wants to do work. If they came back as a subdivision, the City would require a plat that said 25 this side of Weaver Road, 50 foot, or whatever. The way this is going down, we can't do that.

Mr. Harrison: He just said they would donate....

Mr. Jeffers: If they wanted to do work, so my question is, if they have no plans to do any work for the next 25 years, will she still donate the right-of-way at this time on the commercial site plan that was submitted?

Mr. Morley: What we were talking about was this intersection across from....

Mr. Jeffers: So you are only talking about the intersection. The concern was mentioned for Christ Road not being wide enough for the entire 1,350 feet. Mr. Koch was concerned about Weaver Road not being wide enough north and south. So I was wondering, will she donate the right-of-way off her side of the section line at this time, regardless of the City's intent to do work in the foreseeable future.

Mr. Morley: We can prepare a meets and bounds description to dedicate the normal right-of-way. I didn't check that. The street right-of-way there could be only rod wide. I don't know. I see nothing wrong at all with going ahead and making a meets and bounds description to dedicate to the normal right-of-way width.

Ms. Engelbrecht: INAUDIBLE-AWAY FROM MIKE

Mr. Jeffers: The reason I am being this way Jim, is because so many times the developers says he only wants to give it if there is a plan ready to go.

Mr. Morley: If there is not the normal half of the street right-of-way that we would expect of anybody on a subdivision, I will check the records and go ahead and prepare a meats and bounds description to dedicate the normal right-of-way width along Christ and Weaver I see no reason why we shouldn't do that. We will take care of that.

Mr. Harrison: That is not a condition of zoning.

Mr. Jeffers: The only other thing I had to say right now is, our ordinance does not have any open space code like other communities in Indiana. I am not sure we want an open space code. But this is an open space and I wonder if it would be preserved as an open space. If we don't rezone this, it could easily become 40 acres of condominiums or homes, but you would lose the open space that this community has enjoyed as an orchard for 87 years. This may be the only way this space may be preserved, even if some of it is eventually paved or there is another use put in there. So I wanted to throw that out there. I think that she has to have a market. Until she has a market, I don't see a lot going in there other than what she has expressed at this time.

Ms. Stevens: Are there any other questions? Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Ms. Musgrave, Mr. Offerman, Mr. Pedtke, Mr. Charnes, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Ms. Lowe, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

There being 9 affirmative votes and 1 abstention, Docket No: R-2006-7 goes forward with a recommendation for approval.

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 no discretion in this regard, and that our role in reviewing and acting on subdivisions is purely ministerial.

Seven affirmative votes are needed to approve a subdivision plat and conversely, seven negative votes are required to deny a plat. In the event that there are not seven votes for

or against, this is considered a no action vote and the plat returns to the next APC meeting for consideration.

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

Now let's move on to the subdivisions.

3-S-2006 Centerra Ridge

Part of Section 7, SE T6S/R9W Knight Township Map CO-245

Location: Located on Telephone Road, one-half mile east of Old Boonville Highway.

Mr. Mills: Centerra Ridge is a proposed 209-lot residential subdivision on 77.1 acres located north of Telephone Road between Old Boonville Highway and the Vanderburgh/Warrick County line. The western portion of the site was rezoned from Ag to R-1 by the County Commissioners in January, 2006. The applicant recently filed a petition to rezone the eastern half of the site to R-3. Lots 165 and 166 contain existing homes while the remainder of the site has been in agricultural use. The Subdivision Review Committee reviewed this plat on March 14, 2006. The plat shows an extensive internal street network connecting to Telephone Road at two proposed subdivision entrances. The plat includes an access note that states: "All lots, except 166 and 167, shall access interior streets only. Lots 166 and 167 (*existing residences*) shall access Telephone Road." This note needs to be revised to reflect adjusted lot numbering (these lots are now number 165 and 166). There is an unimproved 50' Ingress/Egress Easement along the entire east boundary of the plat to provide future access to the north of the site.

The County Engineer's comments are as follows:

Add a note to the plat that indicates that encroachments are not allowed in the right-of-way easement along the east boundary of the subdivision.

EUTS comments are as follows:

The subdivision plat should be amended to reflect the details of the two entrances submitted to EUTS on February 28, 2006, and should include the adjustment in the median width requested by the County Engineer.

On April 4, 2006 preliminary drainage plan approval for the Centerra Ridge subdivision was granted by the County Drainage Board. Although this site does not lie within the 100-year floodplain, it is within Flood Zone B (500-year floodplain). The minimum first floor (MFF) elevations for structures on the site that have been established by the Building Commission range from 392' to 394 ft. These MFF elevations need to be shown in all affected lots on the plat. The Flood Zone B (500-year floodplain) boundary on the plat is

difficult to locate. The line weight for the flood boundary needs to be increased to better delineate the floodplain.

Water and sewer will need to be extended to the site to provide utilities. The Water and Sewer Department comments are:

WATER: System improvements needed to supply this subdivision. Get with Water & Sewer Utility Engineering.

SEWER: Sewer lift station required. Submit plans for review.

Lift Station easement – S.S.E. Provide adequate easements for sanitary sewer without interference with other utilities.

Staff recommends that the Centerra Ridge plat be approved with the conditions mentioned in the staff field report, as the plat including these conditions 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. London has been sworn in.)

Mr. London: My name is Ron London with Morley and Associates. I am the design engineer on the project. Just a couple comments. The items that the Building Commissioner had as far as the minimum finished floor elevations, we will be submitting a floodplain study revising a few of the elevations they have on there. But we will get their approval prior to recording the plat. On the Water and Sewer Dept. note, we would like to state that the developer plans on following their specifications under current regulations. All the other staff recommendations we agree to.

Ms. Stevens: Are there any questions? Are there any remonstrators? (None.) Motion for approval, subject to the following conditions: 1. At the time of recording, the plat must accurately list and have signatures for all owners of record. 2. Add to the plat under General Notes: "Encroachments into the right-of-way easement along the east boundary of the subdivision are not allowed." 3. Revise the plat to show the Lift Station easement – S.S.E. as approved by the Water and Sewer Department. 4. Document that the Water and Sewer Department is satisfied with the plans for extending water and sewer easements. 5. Revise the plat to show the Minimum First Floor (MFF) elevations as determined by the Building Commission on all affected lots within the 500-year Floodplain (Zone B). 6. Revise the plat by increasing the contour line weight for the 500-year Floodplain (Zone B) to better delineate the floodplain boundary. 7. Revise the plat to reflect the details of the two entrances as submitted to EUTS that include the adjustment in the median width as requested by the County Engineer.

Mr. London: We don't have a problem with any of those. I just want to reiterate about the Water and Sewer Utility that we will follow the current rules and regulations that they have set forth in their specifications.

Ms. Stevens: (Motion was made and seconded.) Call the roll.

Mr. Jeffers: Encroachment into the right-of-way by what?

Mr. Mills: That is referring to the 50 foot access easement that is along the east property line. That is referring to fences and sheds, yard barns. That is an access for the property to the north of this proposed subdivision. That is shown on their plat.

Mr. Jeffers: It is a farm access?

Mr. Mills: It is an ingress/egress easement to the property to the north. So whether it be for farm or for any other development that could be made within that 50 foot of right-of-way easement.

Mr. Jeffers: Until there is an actual access, it is just a set aside right-of-way?

Mr. Mills: It is a guaranteed access to that property. I do not believe it is being utilized at this time.

Mr. Jeffers: I wondered if the language on the plat could allow non-permanent, non-structural encroachment for the period of time that it is not being used.

Mr. Mills: That is a recommendation that the County Engineer recommended.

Mr. Jeffers: Because until there is an improvement in the right-of-way, it remains usable property in most cases.

Mr. Mills: I think the desire was to prevent any heartache that might be done if someone put fencing up and then somebody comes through their bulldozer and knocks them all over.

Mr. Jeffers: I understand. But until that happens, it seems like a waste. Who is paying taxes on that right-of-way?

Ms. Stevens: Call the roll.

Ayes: Mr. Offerman, Mr. Pedtke, Mr. Charnes, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Ms. Musgrave, Ms. Stevens

Nays: None

There being 10 affirmative votes, Docket No: 3-S-2006 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.

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber