

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 11, 2005

ROLL CALL

Mr. Foster: I would like to call the August 11, 2005 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

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

Members Absent:

Stacy Stevens

Area Commission Staff Present:

Brad Mills, Executive Director; Janet Davis, Zoning Enforcement Officer; Donna Holderfield, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel

APPROVAL OF MINUTES

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

I would like to welcome all of you here this evening on behalf of my fellow Commissioners and the members of the staff of the Area Plan Commission. For those of you who have not been here before and are not familiar with the process, we are generally a recommending body that meets the second Thursday of each month. We recommend zoning decisions to the City and County legislative bodies. However, the Area Plan Commission is the sole authority on subdivisions.

REZONINGS

Mr. Foster: For rezonings, it takes seven affirmative votes to recommend approval of a petition or seven negative votes to recommend denial of a petition. In the event that there are not seven votes, it still goes forward to the City Council or County Commission

with no recommendation. The City rezonings we hear tonight will be heard by the City Council on September 12, 2005, at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on August 16, 2005, at 5:00 p.m. in Room 301.

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

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

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

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

The following petitions will not be heard tonight:

Docket No: R-2005-14 Interprop Fund VIII 2600 Oak Hill Road
CONTINUED TO SEPTEMBER DUE TO IMPROPER NOTICE

Docket No: 15-S-2005 Ansbro Subdivision
CONTINUED TO SEPTEMBER AT THE PETITIONER'S REQUEST

Docket No: 16-S-2005 Morgan Estate, Replat of Lots 9 and 10
CONTINUED TO SEPTEMBER DUE TO IMPROPER NOTICE & NO DRAINAGE
APPROVAL

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 rezoning petition.

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

NEW BUSINESS
CITY REZONINGS

Docket No: 2005-23-PC R-2005-15 Petitioner: Carolyn Belwood

Address: 1310 E. Columbia Street

Nature of Case: Change from a C-4 zone to an R-2 zone.

Mr. Mills: Carolyn Belwood is requesting to downzone her property located at 1310 E. Columbia Street from C-4 to R-2. This is a 0.13 acre site located on the north side of Columbia Street, just east of Highway 41 North. This request to downzone will bring the existing residence into conformance with zoning code restrictions and 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 development and is appropriate to the small size of the lot which makes the provision of adequate on-site parking for commercial use of the site difficult. This site is located in an older area of very mixed zonings and uses. The properties along the north side of Columbia Street were strip zoned to C-4 by the City in the mid 1950's. All of the residences which remain along the north side of this commercial strip between Highway 41 North and Willow Road are zoned C-4. This downzoning to R-2 is consistent with the existing use.

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

Ms. Belwood: My name is Carolyn Belwood, 5310 Cunningham Drive.

Mr. Foster: Anything you want to add?

Ms. Belwood: No.

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

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

Nays: None

There being 11 affirmative votes, Docket No: R-2005-15 goes forward with a recommendation for approval.

Docket No: 2005-25-PC R-2005-16 Petitioner: Spurling Development, LLC
Address: 2000 N. Green River Road
Nature of Case: Change from agricultural and C-4 zones to R-3 and C-2 zones.

Mr. Mills: Morley Associates, on behalf of Spurling Development, is requesting to rezone 14.1 acres of the property located at 2000 N. Green River Road. The acreage is located west and north of the intersection of Green River Road and Theatre Drive. This is a request to rezone 9.03 acres from Agricultural to R-3, and 5.07 acres from C-4 to C-2. In 1993, a 17.5 acre tract at the northwest corner of Green River Road and Theatre Drive was rezoned to C-4 for commercial development. Mr. Spurling is proposing to downzone 5.07 acres of this 17.5 acre tract from C-4 to C-2 which will allow development for a variety of uses including multi-family residential. 12.4 acres remain available for C-4 commercial development. The 9.03 acres adjacent west of the commercial site is proposed as R-3. The rezoning exhibit submitted with this petition indicates that the two parcels – the C-2 and the R-3 - will be combined for a multi-family residential development. Mr. Spurling's preliminary, conceptual site plan indicates that a single access is planned onto Theatre Drive for the proposed new apartments on this site. Site Review and Subdivision Review Committees will address access upon submission of site development plans. This site is located at the edge of an area designated as commercial on the Comprehensive Plan Future Land Use Map 2025. Areas adjacent east and south are commercial, north is agricultural, and west is a single-family residential subdivision. The Comprehensive Plan recognizes that multi-family is an appropriate "buffer" use, separating single-family residential from commercial 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? (Those persons have been sworn in.)

Mr. Morley: My name is Jim Morley with Morley and Associates. This is Bill Spurling with Spurling Development. This is not the Lowe's store that was planned in 1993. That is what it was originally zoned for. A little history, the original petition was to rezone it all to C-4. Then Lowe's didn't need that much. Some of the neighbors expressed concerns that they would rather see something other than C-4 against the west side of the property. What was done, since there was no plan at that time, it was just to leave it an agricultural strip and wait for another plan. This is that other plan. As you know, Mr. Spurling has been involved in senior housing projects and that is the plan that you see here. This may not be the exact configuration of how the units are. But that is the plan. The C-2, an explanation of why one is R-3 and the other is C-2, on the portion that is C-2, there is a possibility that we would utilize a portion of this for parking, or we may have some C-2 commercial uses along there. So that is an explanation of why we didn't downzone the C-4 to R-3. We need some flexibility on that line between the commercial on Green River Road and the residential in this portion. As was

mentioned, the Comprehensive Plan did show all of this as commercial. We believe the utilization of R-3 and C-2 is a proper zoning of this property. I would be happy to answer any questions.

Mr. Lockard: On your plan and the drawings, you show an access on Theater Drive. Am I also seeing a throughway all the way to Green River Road?

Mr. Morley: There will be access to Green River Road as the commercial would develop. Whether or not that would connect in or we would be looped, usually we try to provide an alternative means to get somewhere. But the primary access for the residential would be to Theater Drive, not to Green River Road.

Mr. Lockard: But you still show there is access to Green River for the residential on that drawing.

Mr. Morley: It is possible, yes.

Mr. Lockard: I was concerned since there is so much traffic on Green River Road. You say that is conceptual. Are you going to have a right-hand decel lane for anybody who is traveling south on Green River to turn on to this road?

Mr. Morley: The Green River Road approach would not likely occur until there is commercial development, until there is a user of this property, or Bill develops it commercially and then presents his site plan to the Site Review Committee. We would not go ahead with any construction of that access to Green River Road. When we do, you would look at the number of cars being generated in order to develop a design for right turn lanes. All of these are in formulas that EUTS and the traffic review committee looks at. That is all something that we look at when we go over that plan.

Mr. Lockard: So you are saying unless the C-4 to the east of this development is developed, that you will not have an access road from Green River to the residential area?

Mr. Morley: I said until. I didn't say unless.

Mr. Spurling: INAUDIBLE-AWAY FROM MIC.

Mr. Foster: I know the access will be addressed at Site Review. But it appears that entrance on Theater Drive is directly across from the Teacher's entrance.

Mr. Spurling: It is. We met with the Teacher's Credit Union and showed them this. They were very favorable.

Mr. Foster: That would make sense to line those up. Any other questions?

Mr. Jeffers: I went out there today. Mr. Spurling, there is a large sign at the corner of Green River and Theater with your company's name on it advertising availability of the land. Is that for the commercial portion?

Mr. Spurling: INAUDIBLE

Mr. Jeffers: So you are actively seeking developers of the commercial at this time?

Mr. Spurling: INAUDIBLE

Mr. Jeffers: So there is a likelihood that the C-4 will develop as immediately as the R-3.

Mr. Spurling: There is not a way to really know that. We are kind of at our own time table on the apartments. As far as the commercial, that will develop as we can get clients.

Mr. Jeffers: I hope it does develop as rapidly as possible. On that wish, I would hope that the road out to Green River Road is completed as soon as possible as well, so the residents of the residential area can have a choice of access to Theater or Green River, considering the crowded nature of the intersection of Theater and Green River at this time. I think it would be beneficial to have two ways out. All that could be handled with the traffic engineers at Site Review. But I would like to point to the potential immediacy of that road being built, rather than the eventuality that you and Mr. Morley are speaking to. It could be more immediate than that.

Mr. Spurling: It is our desire to develop as fast as possible. INAUDIBLE....To build the road before we find out what's out there, that isn't very prudent because ...

Mr. Jeffers: You wouldn't want to build it right through a building.

Mr. Spurling: Exactly. As sure as we build the road, somebody would come in and want that area.

Mr. Jeffers: I understand that. Where I am headed with this question, you are working on how many acres of rezoning, 14 acres. How many acres is that other parcel that is C-4? So we are talking about 30 acres?

Mr. Spurling: It is about 26.

Mr. Jeffers: And to the north of there, I notice there is a large parcel that at one time belonged to the same family as this. And they may be as anxious to develop that as you are to develop this? Hopefully headed in that way. I think Spurling Development has been a wonderful developer of residential and commercial property. You have quite a bit to be proud of and we certainly appreciate the expanded tax base. But I am concerned about interconnecting access to that adjoining property and whether there

has been any thought given or discussion between you and adjacent property owner to the north regarding interconnecting access that would benefit both parcels and the eventual owners who come in and move in there as apartment dwellers or commercial land owners that everything is interconnected and possibly even have a frontage road down through there to avoid too many accesses directly onto Green River Road. I think the opportunity is here for some interconnection that one at least one occasion has caused us a problem up on Green River and Lynch.

Mr. Spurling: We are in negotiation with them to get that resolved.

Mr. Jeffers: And hopefully get it resolved to the satisfaction that the County is no longer a party to any disagreement as well.

Mr. Spurling: That is our intention.

Mr. Jeffers: Has there been any discussion with the adjacent property owners on interconnection at this point?

Mr. Spurling: I have not talked to the property owners. I have talked to a representative, a real estate person that has that property listed. They have expressed an interest in having an interconnect. It depends on what ends up happening on that property. INAUDIBLE PORTIONS...

Mr. Jeffers: Could something like that be worded in a commitment document that you would be absolutely willing to provide an interconnecting access point if the uses on the other side of the line were compatible with the uses in your development?

Mr. Spurling: I can do that.

Mr. Jeffers: I would really like to see that. I know we are dealing with two entities here. We are dealing with the City Council and then on the other side of the line we are dealing with the County Commission who would receive a like commitment from the developers on the other side of the line. But I would really like to see some sort of commitment to an interconnecting access point that would limit the direct accesses to Green Road and provide some sort of frontage road situation. I think we all understand the benefit of that.

Mr. Morley: In 2000, the Area Plan Commission and EUTS did a North Green River Road Corridor Study and suggested a frontage road access....

Mr. Jeffers: This is what I am talking about, a frontage road that would have a connector right where the conceptual access to Green River Road is on your plan, and then an extension of the frontage road up to the next property.

Mr. Morley: I would point out, as you look at the map where I circled there, that takes place on the property that we are not here to talk about tonight. It is on what is already

C-4 up front. We are not talking about routing commercial development there through his senior housing project. It is property that Bill owns, but not on property that we are here for consideration tonight.

Mr. Jeffers: Would that prevent us from getting a commitment to provide an interlink, the fact that it is on the part that remains C-4, would that prevent us from getting a commitment to a cross access as a part of this rezoning?

Mr. Morley: Mr. Spurling has stated for the record about the compatibility of access. If those are private accesses, then you have to work out an agreement that addresses the maintenance of the utilization. You don't want a major truck terminal next door.

Mr. Jeffers: What I am trying to avoid is the situation where we record a subdivision with a three foot strip of ground that has, as of yet, prevented the neighbor from accessing a thoroughfare, like we did near across from the Day School. At that point, we have a development, which between 4:30 and 6:00, has cars backed up a quarter mile in front of its only access. I want to avoid that here.

Mr. Morley: I understand what you are saying. I just want to reiterate that that piece of ground that is being zoned is not on what we are talking about. You are asking the question about another piece of ground.

Mr. Jeffers: I am trying to get what I can get regardless of where it is located.

Mr. Morley: I understand. But it kind of creates a legal issue how to handle Mr. Spurling express sign of willingness and I gather that most of you thought that the wording that he suggested was appropriate. I don't know how to create that here. And we don't want to do anything that would delay continuing on to City Council.

Mr. Lockard: But by the time you get to City Council, you could have a proposed covenant in line with what Bill is saying and I know what you are trying to indicate that there are certain use groups within the C-4, I am sure there are certain C-4 uses that would not be compatible with your development here. So my suggestion and hope would be that, by the time you get to City Council, then drop the covenant, eliminate those use groups that you think would not be compatible and good neighbors, I think that would go a long way in what we are asking about.

Mr. Spurling: The only problem with that is we are not sure what is going to go on ours. So how do we start knocking out use groups when we don't have anything to compare to.

Mr. Lockard: Sometimes being vague is good. Sometimes it is not so good. Just something concrete enough that everybody can live with is what I would ask.

Mr. Morley: Might I ask, since what we are talking about is an interconnect that occurs on the C-4 property, which is not what we are here talk about today, is there anything

wrong with Bill creating some sort of agreement, showing it to City Council? We are not tying it to what we are rezoning today because that is in the residential portion. Is there anything wrong with some sort of letter, since it is not tied to the rezoning?

Mr. Harrison: The thing you need to do is speak with John Hamilton, the City attorney. Obviously the intent would be to have some sort of covenant where you would be dealing with the interconnect issue. They don't meet on this issue until Sept. 12.

Mr. Morley: This is something that the Area Plan Commission has addressed, we were aware of it. We fully expected it. We are not here to buck the system. We understand your desire for some sort of covenant.

Mr. Foster: What if Bill says he is not going to do it? What are they going to do, turn down the downzoning from C-4 to C-2 and say, now you have got, instead of 22 acres of C-4 with no requirement to interconnect versus downzoning five acres of it to housing. I think that discussion should have been done when we zoned the C-4, not downzoning part of it to residential.

Mr. Jeffers: I am not sure the discussion didn't happen when C-4 was zoned. It was the same master plan with the same frontage road recommendation from EUTS. Secondly, I am not opposed to C-4. I don't have any objection to a C-4 zoning. I think C-4 has created some good things on the east side that we all enjoy. The fact that it is being downzoned doesn't make it better or worse for me or for the people in the neighborhood. They are asking for R-2 against the residential property. A lot of things around there are C-4.

Mr. Foster: But we are only having this discussion by virtue that Mr. Spurling owns the C-4. If he didn't own the C-4, there is no way we would be having this discussion because we are not even talking about the C-4. We are talking about the residential part of it.

Mr. Jeffers: We are talking about a parcel that is currently zoned C-4 that is being downzoned at this time. A portion of the entire parcel being downzoned gives us an opportunity to talk about this. We wouldn't be talking about it if he wasn't here asking for a rezoning, that's correct.

Mr. Foster: Nor would we talk about it if he didn't own or have an option on that C-4 property up front.

Mr. Jeffers: Right, that he intends to build a road out from the residential to Green River Road. It is a clear intent that he will build that road and I am saying that road could also serve a portion of the property to the north that currently zoned agricultural. I anticipate it will come and ask for some type of mix of zoning just like this is being done and I anticipate there will be quite a bit of traffic generated in the 55 acres to the north. There are 55 acres that we all know will be zoned and developed in the next 5-10 years. I am asking for a commitment to establish an interconnect to help serve the future use

of that 55 acres. I see the opportunity to ask for it now. If I am wrong, call me out of order.

Mr. Foster: I am not saying you are wrong. I think this is the wrong time to have that discussion. But if Mr. Spurling wants to agree to that, that is his prerogative.

Mr. Harrison: Again, that has to be something he does with the City.

Mr. Spurling: I think I can write a letter to the City Council on our intentions...

Mr. Lockard: Mr. Hamilton does have a covenant boilerplate that I am sure he would be happy to share with you.

Mr. Foster: Are there any remonstrators?

Mr. Vincent: My name is Jim Vincent, 9200 Petersburg Road. I have a handout to give you. I am acting as spokesperson for the property owners to the north of this property who are with us tonight.

Mr. Foster: Are you willing to put the interconnect in?

Mr. Vincent: INAUDIBLE (passing out handout) This is relatively straight-forward. The first page is a preliminary subdivision proposal for the property to the north. The second two pages help you get your orientation in terms of the property. The reason this is of interest to us is we are looking at it from the standpoint of an interconnect at the front from the commercial perspective, but also an interconnect at the rear in a residential buffer. Our proposal for this property, this is Sugar Mill, the apartment complex across the street to the north. What we have here is a circular traffic control feature off of Green River with a decel lane and accel lane, then a road that traverses their property to the rear and we have a residential buffer that would be multi-family at the rear that is about 17 acres. So the reason it would be of interest to us to have a discussion about this is we would propose a residential buffer at the rear of the 55 acres and we would anticipate have the opportunity to have access to Theater Drive for the residents. As far as I am aware, there is no other way north of this property to access Spring Valley or any other connection that would provide access to Spring Valley north of this property.

Ms. Musgrave: Do you own this property?

Mr. Vincent: I am representing the owners who are with us.

Ms. Musgrave: Are you a lawyer?

Mr. Vincent: I am a real estate agent here in Evansville and have put together the development plan for them.

Mr. Foster: Have you had discussions with Mr. Spurling about connecting the residential to his residential?

Mr. Vincent: Yes.

Mr. Foster: That is not in his site plan.

Mr. Vincent: Correct. Which is why we are here tonight. Our only request would be, whether it is a covenant or a use and development commitment, something of that nature, if we could make that part of this so that we don't have an issue getting an interconnection. We don't oppose the rezoning on either end. We think it is an appropriate use. We do believe that the more critical of the two is the commercial interconnection which provides the parallel frontage road to Green River, and in conjunction with the traffic feature we got here, we think it would help control congestion all the way down that corridor. This is 1,600 feet from the intersection of Theater and Green River.

Mr. Lockard: The cross street you have between Lots 9 and 10, what is this over here?

Mr. Vincent: That is Sugar Mill Apartments. That is lined up directly with the Sugar Mill complex.

Mr. Lockard: So you have already gone through the aspects of trying to line it up with an existing cross street on the other side of Green River?

Mr. Vincent: Correct. Ideally, we would envision the frontage road going across the property parallel to Green River and then providing a loop and interconnect back to the connection to Theater Drive.

Mr. Foster: You lost me there. On the commercial or residential?

Mr. Vincent: The residential is what we would like to come across the Theater Drive. The commercial that runs parallel to Green River, we don't know where it would go once it enters the Spurling development. But our goal is that it be parallel with Green River and then provide either a connection point back to Theater or back to Green River on that end of the property. I don't know how many existing curb cuts there between these two properties to Green River, but I am assuming it would be addressed as part of the subdivision process.

Mr. Foster: At this point, you would have one and he would have one.

Mr. Vincent: I have spoken, and this is the plan I have seen, and don't have any opposition to the commercial connection as long as it is a like use. We are not opposed to the rezoning. The only issue we can see is the residential area in the rear.

Mr. Foster: Where are your discussions with him as far obtaining that access?

Mr. Vincent: Without a covenant, I don't know that it really matters. From our experience so far, we would need some type of legal agreement to ensure that the property owners to the north have an interconnection.

Mr. Foster: Has compensation been discussed? I assume you will have to compensate him for where he loses a couple of the apartments to put this road in.

Mr. Vincent: We have not had any agreement on having an interconnection, so no it has not.

Mr. Lockard: Your conceptual plan here, you are committed to the frontage road along Green River Road.

Mr. Vincent: That's correct.

Mr. Lockard: Do you plan on putting that into a use and development once you move forward to that process?

Mr. Vincent: We would consider doing that. I heard mention of the agreement that you would propose, but we would agree to do that. I am in favor of interconnections for traffic flow.

Mr. Mills: Jim, would that residential development you show along the west side be a private one lot, or is that proposed to be a residential single family development that would have a public street?

Mr. Vincent: We would propose it to be a multi-family development. We haven't decided whether we would dedicate it as a public street or not. If we did single family, it probably would be a public street.

Mr. Mills: Thank you.

Mr. Vincent: At this stage, and the property owners' decisions about what they want to do with the property, there are lots of options available. You mentioned compensation for the interconnection. Mr. Spurling's development could potentially be part of that buffer zone.

Mr. Foster: Any other questions? Any other remonstrators?

Mr. Morley: Two comments I would like to make. As Mr. Vincent said representing the owners of the property, it would be very appropriate for the owners of that property to come forward with their commitment at this time on the frontage road so that the language that Mr. Spurling offers forward and their language are also compatible and in some sort of document available for City Council and for others to see and for the record. I think the commitment should come from both sides. The second comment I have is that, as you know and I stated earlier, Mr. Spurling's development is a

development of senior housing. Senior housing is not appropriate as a thoroughfare to another subdivision. In the EUTS adopted transportation plan, it discourages routing of traffic through a residential area. I would point out that senior housing residential area is even worse. That seems like bad planning to me. It would be much more appropriate for that to route forward to tie into the frontage road at the front or some way so that there is any kind of a thoroughfare that would come south through their development and tie into this residential property.

Mr. Jeffers: Mr. Foster, I tend to agree with the last statement Mr. Morley made. I had never seen this handout that Mr. Vincent handed out. My intent was to address the frontage road that you see connecting the commercial pieces of property.

Mr. Foster: If both sides can agree to do it and enter into a private covenant, I assume the Commissioners and City Council would look favorable on that.

Mr. Jeffers: I saw the opportunity for the Area Plan Commission to act as a recommending planning body to the other two bodies to encourage this interconnection.

Mr. Lockard: One thing that would solve part of this from both sides is that if both sides went and came back with a use and development which is much more enforceable and take this back and come back with a use and development rather than rely on the covenant because we all know there are some problems with that. You could go work out a use and development that would address what Bill's talking about.

Mr. Spurling: I understand where you are coming from. But I think you should know a little of the background on this whole deal. As you can see, that 17 acres that he is talking about making residential, he does not have a purchase order. He told me he would like to develop the whole 53 acres. He has been hounding the living heck out of me to partner up with him on that in exchange on some access concessions on the Lynch/Green Road developments. We have been negotiating to get something put together on that. I feel like we are very close to getting that problem resolved down there. I don't feel that it would be fair to put my rezoning off over a use and development commitment because we don't have anybody here that is willing to put roads in or do any of the things we are going to be doing. They are not up for rezoning anyway. I don't feel that is appropriate.

Mr. Jeffers: All I am really trying to do is avoid a situation where a subdivision plat goes forward that we don't have a subdivision plat come back to us that includes what I politely refer to as a three foot spite strip that results in the County being named in another law suit because we can't get cross access between two commercial properties.

Mr. Spurling: I will guarantee you under oath that there won't be a spite strip and there will not be any interconnecting back in the residential because I can't afford to run traffic out of a subdivision. I know of no place in town that they do that to get out to a side road. It would be nice for him if, his plan is to buy this from these folks and give option o

the front part. Then he will try to get some tenants to buy and develop that part. So it makes very good sense for him if he can go ahead and force access across here and use my road as access just like he did on the other end of the road. That makes a lot more sense to do that than for him to go to the expense of him running the road out here like what should happen if they develop this part. I can't do that. I can't build a retirement community and then run traffic through it.

Mr. Lockard: I agree with Bill on this one. I am not concerned about the residential part on the back. That is not the issue. It is the frontage road.

Mr. Spurling: Your master plan has a frontage road coming down through here and access here and one across from this road right here. I will draft a letter to the City Council and state that we will build or connect if it is a like kind of use on the C-4 part in the front.

Mr. Jeffers: I am not asking that you build it across the line on his property. Just don't.....

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

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

Nays: None

Abstention: Mr. Kniese

There being 11 affirmative votes and 1 abstention, Docket No: R-2005-16 goes forward with a recommendation for approval.

Mr. Vincent: The comment I wanted to make, Bill asked would the property owners agree to that interconnect at the front. I polled them and they would. I wanted to make a comment in defense of some of the comments that were made there. If Bill purchases the rear of that property and makes it part of his development, I am assuming that it wouldn't be an unlike use. But I don't understand the legal differences between use and development commitments and a covenant. But it is the basis for the lawsuit that we are dealing with at Lynch and Green River. My point about this is this is a very serious issue because it will affect safety and traffic and all the issues surrounding it. This does have a direct impact on the value of their property. The rear is not the primary issue. The front is the primary issue. I want to go on the record to say that they will provide that interconnect.

Mr. Foster: Okay. I think everybody agrees, and it is kind of confusing because we are dealing with both the City and County. So hopefully the two of you can get together and

draft documents that satisfy everybody to make that interconnect up front. That is really that is going to occur because there won't be an interconnect in the back.

Mr. Vincent: The only question I had is at what point would we be able to get that agreement completed in the process?

Mr. Foster: I assume before the next City Council meeting. The City Council will have the minutes of this meeting so they will know how much discussion was held on that issue.

Mr. Vincent: Thank you.

TAPE CHANGE

Docket No: 2005-27-PC R-2005-17 Petitioner: Robert J. Neale

Address: 1923 Hathaway Avenue

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

Mr. Mills: Robert J. Neale is requesting to downzone his property located at 1923 Hathaway Avenue from C-4 to R-1. This is a 0.32 acre site located at the northwest corner of Hathaway Avenue and Bernice Avenue. This request to downzone will bring the existing residence into conformance with zoning code restrictions and remove the legal nonconforming status designation and the accompanying legal nonconforming restrictions from the site. This downzoning to R-1 is consistent with the adjacent residential neighborhood development and is appropriate to the existing use. The Comprehensive Plan Future Land Use Map 2015 recommends this area for residential use. This downzoning to R-1 is consistent with surrounding zonings and use, and is consistent with the residential plan for the area.

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

Mr. Gray: Ryan Gray, 4215 Schutte Road.

Mr. Foster: Do you want to add anything?

INAUDIBLE QUESTION

Mr. Gray: No, I am just buying the house to live in it.

INAUDIBLE QUESTION

Mr. Gray: He is the owner of the house right now. But he is out of town so I had to file the petition.

Mr. Foster: You want to purchase it but the bank won't give you any money until it is zoned correctly?

Mr. Gray: Yes.

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

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

Nays: None

There being 11 affirmative votes, Docket No: R-2005-17 goes forward with a recommendation for approval.

Docket No: 2005-28-PC R-2005-18 Petitioner: Darrel and Tonia Eissler

Address: 1321 E. Riverside Drive

Nature of Case: Change from an R-2 zone to a C-4 zone.

Mr. Mills: Morley Associates are representing Darrel and Tonia Eissler and this request for a change in zoning from R-2 to C-4 for approximately half of the Eisslers' residential lot located at 1321 E. Riverside Drive. This 0.287 acre site is located on the south side of Riverside Drive, between Lodge Avenue and Maplewood Circle. The site is adjacent to the Eisslers' existing C-4 zoned business. This is a request to expand the C-4 to allow a car sales lot adjacent east of the business. The existing business has commercial access to Riverside Drive. If this site is approved for expansion of the C-4 commercial development, access to the parking should be through the principal use lot. Site Review will address access and compliance with all code requirements upon submission of plans for the development of the site. If this site is approved for C-4 commercial use, screening and setbacks must be provided and maintained for protection of the remaining residential development. Commercial adjacent to residential requires a minimum 10-foot open and unobstructed grass or landscape buffer area adjacent to residential. The Comprehensive Plan Future Land Use Map 2025 indicates that this site is in an area designated as residential development. This site is located in an older area with a scattering of commercial uses along the Riverside Drive corridor. This rezoning to C-4 is to allow expansion of the Petitioner's adjacent C-4 enterprise to include half of the adjoining residential lot. The division of the residential lot into two separate zonings and uses will require platting the site as a two lot subdivision. Other than the Eisslers' business, all other immediately adjacent properties are residential. The requested C-4 classification is a consistent with the adjacent zoning to the west 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. Leek: My name is Danny Leek with Morley and Associates. I am here with the Eisslers. They are here to answer any questions you might have. This is to expand their existing business of auto sales and storage of vehicles. They bought the entire parcel with the plans to renovate the house and use it for sale or rental property later on but keep it residential.

Mr. Foster: Are there any questions?

Mr. Lockard: Since that is R-2 around that, what have you heard from any of the neighbors in terms of expansion of this?

Mr. Eissler: My name is Darrel Eissler, 8133 Yorkridge Drive, Newburgh. I have talked to all the neighbors except the one directly across the street. The parcel of land that would actually touch theirs is about 10 feet. I keep my place very neat. I am not having any problems with any neighbors. We watch out for each other. We have a good relationship with all the neighbors.

Mr. Lockard: So you are developing the property, but you don't live in any part of this area. C-4 is the highest you can go on commercial but you say you only want to use it for automotive sales.

Mr. Eissler: I have to have that to be able to park the cars there. All I want is a parking lot.

Mr. Lockard: Why no use and development to limit this to only what he wants since there are 170 uses in C-4? Everything around that is residential. There are a couple C-4's. But there are a lot of CO's and C-1's. You are going all the way to the ceiling with this and there is nothing to protect the neighbors if you decide to not be there any more and anything can move in there.

Mr. Leek: INAUDIBLE....

Mr. Jeffers: Is this that old tire shop?

Mr. Eissler: No, it is the auto part store.

Mr. Jeffers: What do you do there?

Mr. Eissler: We sell used cars there. We are trying to expand.

Mr. Kniese: Did you say you needed the C-4?

Mr. Eissler: Yes, it has to be C-4 to be able to park the cars there.

Mr. Foster: Are there any remonstrators?

Ms. Musgrave: Did you say you talked to Jerry Nunley next door?

Mr. Eissler: I talk to all the neighbors and cut the grass and told them right up front what I was going to do. They bring me tomatoes over.

Ms. Musgrave: They got notice?

Mr. Eissler: Yes, everybody got notice.

Mr. Foster: Is it behind or south? That looks like a commercial business from here.

Mr. Mills: INAUDIBLE

Mr. Eissler: I own the house.

Ms. Musgrave: Even though Jerry Nunley's name is on the property record card?

Mr. Eissler: It shouldn't be.

Mr. Foster: The one next to the red?

Mr. Eissler: There, I talked to him, yes, when we were cutting grass. I told him what we are doing. He did not have a problem with it.

Mr. Lockard: Does there need to be a fence around this lot? Will that be required as part of this?

Mr. Mills: No.

Mr. Lockard: Why not?

Mr. Mills: It is not a storage area. The opaque fence is required for storage. Between the residential, it has to have a landscape buffer or green area 10 feet along the area.

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

Mr. Foster: (During roll call.) Although I would like to see a use and development commitment, I vote yes.

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

Nays: Mr. Lockard

Abstention: Mr. Kniese

There being 9 affirmative votes, 1 negative votes, and 1 abstention, Docket No: R-2005-18 goes forward with a recommendation for approval.

COUNTY REZONINGS

Docket No: 2005-24-PC VC-7-2005 Petitioner: Three I Properties, LLC

Address: 535 Dixie Lane

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

Mr. Mills: Les Shively is representing Three I Properties and this request for a change in zoning from Agricultural to C-4 for their property located at 535 Dixie Lane. This 1.149 acre site is located on the north side of Boonville-New Harmony Road, between Highway 41 and Old State Road. The site includes the rights-of-way of streets interior to the Grant Hills Commercial Subdivision. Access to the lots within the subdivision will be determined by Site Review at the time of submission of plans for the development of the site. This site is adjacent to an 8-acre tract rezoned to C-4 in December, 2000 for commercial development. This 1.149 acre tract includes rights-of-way of Boonville-New Harmony Road, Riley Drive, and Dixie Lane. The remaining land was included as part of Lot 3 at the time of approval and recording Grant Hills Commercial Subdivision. Rezoning of this site to C-4 allows commercial use of all of Lot 3, eliminating the need for special use approval for a parking lot within the agriculturally zoned part of the lot. This site is located adjacent to a commercial tract along the Highway 41 North corridor, an area planned for commercial and industrial development within the Comprehensive Plan. The expansion of the commercial area to include this small site which was included as part of the Grant Hills Commercial Subdivision plat is consistent 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? (Mr. Shively has been sworn in.)

Mr. Shively: Thank you. My name is Les Shively, representing the petitioner. I don't have that much to add other than your aerial is a little dated. It doesn't look quite like that any more. Those structures aren't there any more. The reason that was not zoned back then is we had a buyer who needed additional parking. We needed to expedite things. That is why we went for a special use for the parking. That deal fell through. The client is now in the process of marketing the property and anyone looking at the property thinks it is kind of strange that there is this part that is going to be included but it is not zoned C-4. It makes it rough for them to set up their site plans and their layouts. So it is an impediment to marketing. As Mr. Mills said, this part is already included in the commercial subdivision that has already been approved. I would be happy to answer any questions. Mr. Gene Hahn, who is one of the members of the limited liability company that owns this property is here.

Mr. Lockard: Are there any use and developments on the existing C-4?

Mr. Shively: Yes, sir. They have all been complied with. My client has made substantial improvements to the Highway 41/Boonville-New Harmony Road entrance, put in this Dixie Lane. There was a lot of grade work that had to be done to make that a safer ingress and egress. That was included in the use and development commitment. The traffic studies have been completed.

Mr. Lockard: I guess my question was if there was a use and development on the other C-4, why wasn't this one done the same way?

Mr. Shively: Because it has already been done. Everything in the use and development commitment has already been accomplished.

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

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

Nays: None

Abstention: Ms. Musgrave

There being 10 affirmative votes and 1 abstention, Docket No: VC-7-2005 goes forward with a recommendation for approval.

Docket No: 2005-26-PC VC-8-2005 Petitioner: West Evansville Rural King Supply
Address: 2800 N. St. Joseph Avenue
Nature of Case: Change from a C-2 zone to a C-4 zone.

Mr. Mills: Steven Bohleber is representing West Evansville Rural King Supply and this request for a change in zoning from C-2 to C-4 for the property located at 2800 N. St. Joseph Avenue. This 15-acre site is located at the northwest corner of St Joseph Avenue and Diamond Avenue. Two existing commercial access drives onto St. Joseph Avenue provide access to this 15-acre commercial site. No additional access should be required by this new use of the site. This is a petition to rezone the long vacant St. Joseph Avenue K-Mart shopping center. The former 128,000 sq ft K-Mart building was a permitted use in the C-2 zoning classification. Rural King, the proposed new occupant of the site, requires the C-4 zoning classification to allow stores specializing in the sale of agricultural implements, lawn and garden equipment, shrubs and trees, marine supplies, feed, and similar retail and/or wholesale merchandise. This is an existing commercial site in an area designated for commercial use on the Year 2025 Future Land Use Map of the Comprehensive Plan. This step-up in zoning from C-2 to C-4 is consistent 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. Bohleber: My name is Steve Bohleber. I represent the owners of this property, the old K-Mart building that has been closed for a long time. The owners are asking for this rezoning to allow for the reopening as a Rural King. I'm sure you are aware of Rural King since they are already in Evansville. They bill themselves as America's farm home store. They sell everything from automotive supplies and clothing to tools and toys. As a westsider, to say this is a welcome addition to the business community in my part of town I think is an understatement. When the owners acquired this site, they did not dream there would need to be a zoning change since the Rural King operation is almost identical to what K-Mart did for many years at that site. It was discovered however, after the purchase, that, for whatever reason, a C-4 classification is needed to allow this to reopen. As Mr. Mills pointed out, this is consistent with the area. It is in a sea of C-4 to the north, south, east, even M-1 across the intersection at the Busler's Plaza. Regardless of why K-Mart did or did not require anything more than a C-2, it is obvious that Rural King needs this classification to sell their type of merchandise, to have outdoor displays, and conduct its business consistent with its retail around the country. There will be no significant changes to the exterior of this building, although it will get a well-deserved face lift. I have several people here with me to answer any questions you might have. Don Davis, who is the president of Rural King Distributing is here, Jack Ferguson, the southern regional manager is here. The realtor who assisted in this project, Ken Newcomb, is here as well. We ask for a do pass recommendation.

Mr. Foster: Are there any questions?

Mr. Jeffers: You have a paved parking area that could park 925 cars. Rural King on Morgan Avenue places a lot of seasonal items and an area for their tractor sales and equipment, etc. Do they really need space for 900 cars?

Mr. Bohleber: I don't think that's realistic to expect that there would be 900 cars there any given time.

Mr. Davis: My name is Don Davis. We would not expect that we would have a need for 900 cars at any one time. We would be surprised to have 100 cars in that lot. On an average day, we would have about 700 people in our store from opening to close.

Mr. Jeffers: The reason I ask is because that is basically a sea of hot, dirty asphalt that generates a lot of storm water that is emptied into Locust Creek and there are state and county agencies that are actively involved in cleaning and studying Locust Creek. The dump has installed facilities that are cleaning up their runoff. Farmers are being asked to do manure control, etc. The other developers in this area have installed storm water quality measures. You probably will not be, by law, required to do that because you are taking an existing facility and turning it into something active and productive. So you probably won't be asked to do an erosion control plan unless you disturb one acre or

more of the existing surfaces. Your drainage plan will probably not be imposed to have detention because you are not adding 10,000 square feet of hard surface or more. But I would ask, not for a use and development commitment, but ask you to converse with Shawn Dickerson, your urban forester, and Larry Caplan, your Purdue Extension horticulturist about possibly putting some tree islands in there to cool some of that asphalt down and make it look nicer than it has looked for the last 20 years. If you would do that, it would be greatly appreciated. The fish and wildlife would like it better if they get that charge of hot, dirty storm water off that asphalt.

Mr. Bohleber: I will provide those addresses to him.

Mr. Foster: Are you planning to use the entire building including the Wesselmans, or are there going to be other users in there?

Mr. Davis: We will be using the majority of the facility, but there are a couple stores on the side of the building that could be used. We haven't made a determination on that yet.

Mr. Bohleber: There is not going to be an expansion of the building though. We will be using the existing structure.

Mr. Lockard: Is it my understanding that Rural King is also going to use this as some sort of distribution facility where they will be doing more than just retail sales?

Mr. Davis: We will have some distribution in the facility, a small warehouse.

Mr. Lockard: Do you forecast a lot of 18-wheeler traffic in and out of there?

Mr. Davis: I don't believe there will be anything significantly more than what we have on Morgan Avenue now. There will be a little more distribution than on Morgan Avenue. But I don't expect the truck traffic to greatly increase. We have truck traffic there on a regular basis also.

Mr. Lockard: It is nice to know the whole facility will be utilized and not just a portion of it.

Mr. Kniese: Mr. Davis, first of all, with your group coming in, I applaud you and wish you guys nothing but the best. To take a vacant building that has been vacant for years, and to put it back to good use is something we all strive for. It seems to fit with the area. The rezoning makes all the sense in the world. So really, I am pretty excited about seeing an existing facility that is vacant and underutilized and having a breath of fresh air being breathed back into it. So congratulations and good luck with your operation.

Mr. Davis: Thank you for those compliments. The Evansville area has been very good to us. So we expect we will be as successful on the west side.

Mr. Padget: I am Fred Padget and I represent the Westside Improvement Association. I will echo Jeff's comments and some of the others. I think it is a wise and smart land use. That building has been vacant for 10-15 years. That kind of dates Lockard. But that's okay. But we are thrilled to see this vacant building put to good use. We wish them every success.

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

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

Nays: None

Abstention: Ms. Musgrave

There being 10 affirmative votes and 1 abstention, Docket No: VC-8-2005 goes forward with a recommendation for approval.

BUSINESS MEETING

Mr. Mills: I have a draft of the covenants and restrictions. Please give us your comments over the next few weeks and we will try to incorporate that and bring it back in a final document. Thank you.

Ms. Musgrave: I have a question for our attorney. I am confused by the people who appear here saying that they are representing other people and they are not lawyers. I am sure this question has come up before. What is the answer to that?

Mr. Harrison: Well, if we had rules that said before this plan commission we only wanted attorneys to appear, that would be our rule. Obviously, the City Council and County Commission would have to have their own ordinance on that issue. This is not a court proceeding. It is close to a proceeding where a lawyer would be needed. But I have called the State Disciplinary Commission. It is my understanding that, unless there was some rule in the ordinance by the City or County that there is not prohibition against someone either representing themselves or having someone on their behalf speak for them even if they are not an attorney.

Ms. Musgrave: I don't have any problem with the people speaking for themselves.

Mr. Foster: We allow engineers to speak for applicants all the time. That individual was a realtor. But engineers and realtors, we get more of them than anybody.

UNIDENTIFIED MEMBER: Is there any written proof that the person representing the property owner actually

Mr. Foster: ...has that authority?

Mr. Herrin: Well, we have garage builders, contractors representing...

Ms. Musgrave: But they are speaking to engineering issues or garage issues. I don't have a problem with them talking about what they know about. But I have problems with it when they say they are representing someone else. But if their representation fails, or something bad happens later on, the person they are claiming to represent really doesn't have any recourse.

Mr. Lockard: Considering how much discussion we have had over what is binding and what is not binding, you know, it sounds real good, but it really doesn't have any binding authority. They say they are representing so and so and the land owner comes back and says they misunderstood...I have to agree. There are some issues there. We are recommending packages based on representations. Do they really have the authority to make those representations? Do we need to rely on those?

Mr. Foster: I assume the legislative bodies can pass an ordinance saying that you either have to represent yourself or have an attorney represent you. I think, on behalf of the Bar Association, they would not object to that requirement.

Mr. Lockard: I would be curious to see what Joe finds out.

Ms. Musgrave: And I want to know why, in this instance, you would need an ordinance for that when the Bar Association is supposed to....

Mr. Harrison: I would be shocked if they tell me that is something that is required.

Ms. Musgrave: Maybe we could drop a form such as he suggests that does somehow...

Mr. Foster: That says "I have the authority of this individual to make representations on their behalf."

Mr. Lockard: Isn't that a power of attorney, or is that going too far?

Mr. Jeffers: Mr. Foster, what do you advise at the beginning of the meeting? There were 10-12 residents of the property to the north.

Ms. Musgrave: They didn't come up to the podium and name themselves.

Mr. Jeffers: Hold on one minute please. What did you ask them to do? You asked them to not repeat themselves or have one person get up and represent them. What is the language we are using there?

Mr. Foster: To elect a spokesperson.

Mr. Jeffers: Cheryl, this has come up in the Drainage Board as well. When someone said they were representing someone at Drainage Board, and you asked if they were a lawyer. So is it a semantics thing you are bothered with?

Ms. Musgrave: No. It is a recourse thing.

Mr. Jeffers: So it is not the word representing?

Ms. Musgrave: No. It is the recourse that anyone would have based on the statements that person makes.

Mr. Jeffers: There were 12 individuals out there who sat there and said nothing while someone got up there and said that he represented them.

Mr. Harrison: We have had instances where we have had people representing other people and the owners of the property weren't here.

Mr. Pedtke: Are we going to apply the same rules to the remonstrators too? Require them to be an attorney?

Ms. Musgrave: I wouldn't think so at all.

Mr. Lockard: As a citizen, we have a right to address anything. Fred is the president of the WIA and the Board has empowered him to speak on their behalf. If a neighbor comes up to speak, the neighbor is speaking as a property owner and that is his right as a citizen.

Mr. Foster: But if I am a property owner and say my neighbor...

Mr. Lockard: I think there is a difference between representing somebody and a spokesperson for a group of people. If you are representing a property owner, you are acting on their behalf. But if you are just a spokesperson for a group, that is different in my mind.

Mr. Kniese: Why do we think that if it is an attorney, it is going to be more accurate?

Mr. Foster: You would have more of a recourse.

Ms. Musgrave: You could sue an engineer or anyone else for...

Mr. Jeffers: Mr. Morley didn't make any legal representations did he?

Mr. Herrin: I have been on the Area Plan Commission for 20-some years and I think when I retire, I am going to come represent and get paid for it and I feel like I would be qualified.

Mr. Foster: Carol McClintock represented after her service as a County Commissioner and sitting on this board. She is a realtor, but she has represented individuals before this board.

Mr. Pedtke: I would think that if having an attorney made it more accurate, then that may be the requirement. But I think we have to be very careful because you are driving up the costs for the applicant, but not his opposition at the same time. I would keep a careful eye on that. Talking about a house and a garage is way different than talking about what is going to be commercially developed for 20 years. Where are you going to draw the line?

Mr. Lockard: The one you had today, you are talking 50 acres. You are right. If Joe Blow wants to add onto his garage, INAUDIBLE PORTIONS....and I don't think anybody has an problem with that. It is when you have big things that affect the long term growth of the County. I think having the luxury that we know that attorneys held to a high standard of ethics. They cannot misrepresent anything.

Mr. Harrison: I will get back with you and...

Mr. Foster: And I don't have a problem with having a requirement to say, just a simple thing saying "I give John Doe the authority to represent me in Area Plan Commission proceedings." It is not a power of attorney. Like the one guy that came in here and said the owner was out of town and he was the one buying it....

INAUDIBLE

Ms. Musgrave: I really am asking about other professionals such as engineers behaving as if they were attorneys as well.

UNIDENTIFIED MEMBER: But you didn't have to be an attorney.

Ms. Musgrave: You do now.

INAUDIBLE

Ms. Musgrave: You have to be a level two and you have to have a power of attorney.

Mr. Harrison: What sort of authority required that?

Ms. Musgrave: Statute.

Mr. Jeffers: Cheryl, that is why I was asking you that. This came up in Drainage Board. Are we going down the road where a licensed engineer, licensed to practice, sworn an oath, as part of his licensed duties, you are going to want an attorney to stand up and say he represents the developer?

Ms. Musgrave: To present a drainage plan, maybe not.

Mr. Jeffers: What's the difference?

Ms. Musgrave: We can talk about this more after the meeting.

Mr. Foster: Obviously the engineer knows a little more about the drainage the most lawyers in town.

Mr. Jeffers: We have licensed engineers who are getting up and swearing an oath and presenting a plan, representing people who may or may not be here to speak for themselves. So are we going down a road where they are not going to be allowed to do that, only attorneys can do that?

Mr. Harrison: I don't think we are going down that road. I think they just want some input.

Mr. Jeffers: I am getting a clear indication that Ms. Musgrave would like for them to be attorneys. Am I correct?

Ms. Musgrave: We can talk about it later.

Mr. Foster: Okay.

Meeting adjourned.

Mark Foster, President

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the Area Plan Commission office.

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber

NEW BUSINESS **SUBDIVISIONS**

Mr. Foster: The rezoning portion of the meeting is now over and we will now hear the proposed subdivisions that are on our agenda. As stated earlier, the Area Plan Commission is the sole authority on subdivisions. State law and our Subdivision Control Ordinance dictate the issues the Plan Commission can consider when reviewing a subdivision application. Unlike a rezoning, consideration of a subdivision is limited to whether it complies with the standards and requirements in the local Subdivision Control Ordinance. If a subdivision application meets the requirements set forth in the Subdivision Control Ordinance, the Area Plan Commission must approve the primary plat. Indiana Courts have indicated that Plan Commissions have no discretion in this regard, and that our role in reviewing and acting on subdivisions is purely ministerial.

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

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

Now let's move on to the subdivisions.