

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

May 11, 2006

ROLL CALL

Ms. Stevens: I would like to call the May 11, 2006 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Derek Dunigan, Roger Herrin, Bill Jeffers, Joe Kiefer, Lynn Lowe, Cheryl Musgrave, Curt Wortman, Stacy Stevens

Members Absent:

Greg Charnes, Mike Lockard, Jack McNeely, Phil Offerman, Bill Pedtke

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 April minutes? (Motion was made and seconded.) The minutes of the April 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 June 12, 2006 at 5:30 p.m. The County rezonings considered tonight will be heard by

the County Commissioners on May 16, 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 subdivision petitions will not be heard tonight:

Docket No: 5-S-2006 Colonial Garden
CONTINUED TO JUNE AT THE PETITIONER'S REQUEST

Docket No: 6-S-2006 Sycamore Pointe Retail Center
CONTINUED TO JUNE AT THE PETITIONER'S REQUEST

If you are here on either of these petitions, 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: 2006-17-PC VC-9-2006 Petitioner: Porterfield Development, LLC

Address: (Complete legal on file.) 8200 Telephone Road

Nature of Case: Change from an agricultural and R-1 zones to an R-3 zone.

Mr. Mills: Porterfield Development is requesting to rezone the property located at 8200 Telephone Road from Agricultural and R-1 to R-3. This is a 38.5 acre site on the north side of Telephone Road, adjacent west of the Warrick County line. This is a petition to rezone a part of the Centerra Ridge Subdivision site, a proposed 211-lot residential subdivision on 77.08 acres. Centerra Ridge was approved by the Area Plan Commission at their meeting on April 14, 2006. The plat of Centerra Ridge shows two entrances north off of Telephone Road connecting to an internal street network that includes several looped roads and cul-de-sacs. A part of the proposed Centerra Ridge was rezoned from Agricultural to R-1 by the County Commissioners on January 17, 2006. A portion of the R-1 site and additional Agriculturally zoned acreage is included in this request to rezone 38.5 acres of the subdivision site to R-3. The R-3 zoning classification allows 50-foot wide lots, and allows 40% lot coverage and minimum 20-foot front and rear yard setbacks. (R-1 and Agricultural districts require minimum 60-foot wide lots, and allow 30% lot coverage and minimum 25-foot front and rear yard setbacks.) This area is designated on the Future Land Use Map of the Comprehensive Plan as an area of residential development. This change in zoning to R-3 for this 38.5 acre site 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. Lutz: My name is Matt Lutz. I am here for Les Shively, representing the petitioner, Porterfield Development. With me is one of the heads of the project, Mr. Bruce Biggerstaff. We feel the staff field report accurately describes the project. We are here to answer any questions you may have and to address any issues by remonstrators.

Ms. Stevens: Are there any questions?

Mr. Jeffers: Isn't this basically the same thing that was asked for by The Glens to allow a little more lot coverage?

Mr. Mills: That's correct.

Mr. Jeffers: Is this due to the current market for housing?

Mr. Lutz: Yes.

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. Wortman, Ms. Stevens

Nays: None

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

Docket No: 2006-18-PC VC-10-2006 Petitioner: Mayse Farm Market, LLC

Address: (Complete legal on file.) 6638 N. St. Joseph Avenue

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

Mr. Mills: Steven Bohleber is representative for Mayse Farm Market and this request to rezone a 1.9 acre part of their approximately 54 acre farm located at 6638 N. St. Joseph Avenue from Agricultural to C-2 with a Use and Development Commitment. This is a request to rezone to allow reestablishment of the Mayse Farm Market on this site. The Mayse market was destroyed by fire in December, 2005. Site Review addressed compliance with all code requirements on March 20th, when plans were submitted for the reconstruction of the farm market on the site. The Mayse's have filed a petition for variance to allow maintenance of the existing gravel drives and parking; the variance is scheduled to be heard by the Board of Zoning Appeals at their meeting on May 18, 2006. Mayse Farm Market has obtained an improvement location permit to allow construction of a new 4,400 sq ft market on the 1.9 acre site. The new market is limited to sales of on-site products & produce only until the rezoning of the site to C-2 is approved. Commercial zoning is required to accommodate any additional use on the site. A use and development commitment is included with this rezoning request which eliminates many commercial uses typically allowed in the C-2 classification, allowing 18 uses identified by the applicant as possible future commercial activity on the site. The Comprehensive Plan Future Land Use map designates this area as agricultural. This is a request to allow a change in zoning to C-2 with a use and development commitment for a 1.9 acre part of the Mayse farm operation for the Mayse Farm Market.

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. Bohleber has been sworn in.)

Mr. Bohleber: My name is Steve Bohleber. I represent the petitioner and owners of the property on N. St. Joe. Paul and Sherrill Mayse are here to answer any questions. As Mr. Mills pointed out, my clients are requesting to rezone the property from agricultural to C-2 to allow the reconstruction of Mayse Farm Market at this site. Historically the Mayse family has farmed this land and land around it for generations. Since 1977, the Mayse Farm Market has been located at approximately the location of this new structure. All was going well and would have continued going well, but for a fire that occurred on December 17, 2005 that destroyed the market. The market is currently being rebuilt and is almost done. Because of the interruption in use, the need to rebuild, and a few of the ancillary

products that were being sold at the farm market, in addition to the farm products raised on site, this zoning petition became necessary. If it is rezoned, my clients also submitted a restrictive use and development commitment that outlines what they have historically done there and what they anticipate what might come about in the future as a component of the farm market. As was pointed out, my clients are ahead of the game. They have already been to Site Review. They have an improvement location permit ready and approved. They are almost ready for operation and we ask that this body make a do pass recommendation to the County Commissioners to allow Mayse Farm Market to reopen again and support the Mayse family as it has for many years.

Ms. Stevens: Are there any questions? 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. Wortman, Mr. Dunigan, Ms. Stevens

Nays: None

There being 7 affirmative votes, Docket No: VC-10-2006 goes forward with a recommendation for approval.

Docket No: 2006-21-PC VC-11-2006 Petitioner: Mike Elpers and Scott Straub
Address: (Complete legal on file.) 5300 Woodhaven Drive
Nature of Case: Change from an R-1 and agricultural zones to a C-4 zone.

Mr. Mills: Mike Elpers and Scott Straub are requesting to rezone the property located at 5300 Woodhaven Drive from Agricultural and R-1 to C-4. This is a 9.8 acre site located at the northwest corner of Diamond Avenue and Cynthiana Road (Hwy 65). The eastern part of the site consists of an R-1 zoned subdivision with a dedicated street, Woodhaven Drive, serving as access to the site. There is an access cut onto Highway 65 at the entrance of Woodhaven Drive right-of-way. The street within the subdivision has never been improved or installed. If the site is rezoned to accommodate commercial use, the access must be upgraded for commercial use. County Engineer John Stoll states: "INDOT approval will be required for S.R. 65 access for this site." Rezoning 9.8 acres for unrestricted commercial use could generate significant traffic at this site. Evansville MPO suggests that a warrant study should be required to determine whether additional auxiliary lanes such as a right turn/decal lane and a center left turn lane is warranted. Issues concerning adequate sight distance at the entrance should be addressed by INDOT and the Site Review Committee. This is a request to rezone 9.8 acres from Agricultural & R-1 to C-4. Many uses permitted within the C-4 district have the potential to generate significant traffic. No information has been submitted with this petition which would indicate any infrastructure improvements planned for this site. According to the Comprehensive Plan, it is essential for development proposals along major arterials to be accompanied with commitments to construct the infrastructure improvements necessary to accommodate site generated traffic. Information submitted by the applicants indicates that all utilities are available to this site except sewers; this site is served by a septic

system. Commercial development should be served by sewer. Due to the absence of sewers and other infrastructure, the Comprehensive Plan Future Land Use Map designates this area as Agricultural and undeveloped, including scattered residences. Surrounding area is completely agricultural and residential with the exception of a small retail shop located east of Big Cynthiana Road at Kasson Drive.

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

Mr. Rheinlander: My name is Bob Rheinlander. I represent Mr Straub and Mr. Elpers, the petitioners. Unlike Mr. Bohleber client, we are not ahead of the game. We are in the preliminary stages and we notified the Commission that we have found out there are quite a few folks that have concerns and we seek a continuance to give us time to sit down with the neighbors and try to develop some mutually acceptable use and development commitment for this property. With that in mind, we would ask for a two month continuance. However, there is a crowd of remonstrators out here and their attorney. As far as my clients are concerned, their long-term plans for that property are to relocate the Straub small equipment sales and service shop which is located up close to 164 on State Road 65 down to this location and hopefully grow their business. Right now, when they get a few customers, they don't have any room any more. They have very little traffic flow and their business is sales and service of equipment and engines. The problems some of the neighbors are concerned with they don't have with this type of business. We would like to as for a two month continuance. To my knowledge, the only attorney that represents land owners right now is Mr. Wischer. There may be others.

Ms. Stevens: So that would be continued to the July 13, 2006 meeting. In the interest of the group, we don't have a lot of Commissioners here tonight. I think it would be better served to hear the comments on the July 13th meeting.

Mr. Jeffers: How many minutes has Mr. Rheinlander spent on the case out of the 10 minutes he was allotted?

Ms. Stevens: So you want to hear from the attorneys?

Mr. Jeffers: He did tell us that the intent of the petitioner is to relocate a business. Now that that is out in the open, maybe we could hear three or four minutes from the people that spent the time to travel down here. As to the other Commissioners not being here, they can read the minutes.

Ms. Stevens: Okay. So whom are we going to hear from?

Mr. Wischer: Chris Wischer. Just to let you know, I represent the neighborhood, but we are talking about the folks living in the immediate vicinity of the site. I know there are a lot of people here that aren't in that immediate vicinity, but I don't represent their interests necessarily. I don't know what their position is on what I am about to say. With regard to

the request for the continuance, in the interest of economy of this matter, it would seem to me that that is what is probably in order, because at the end of the day, if they were to submit a new petition with a use and development commitment, it would come back before this body per the ordinance. The way this thing has transpired is a little disappointing to me in the fact that a petition was filed that is a blanket C-4, no use and development commitment, 10 acres of land in a predominantly residential and agricultural area. The neighbors were not contacted until the notice went out. That notice was sent out a month ago. About that time is when I was contacted. We have had a couple meetings with many of the folks out there. Fliers have been circulated to let others know what is going on. My name was actually included in that flier. Until today, there has been no request for time or a continuance or no request to have a meeting. I know Mr. Rheinlander has probably just gotten involved. But it has been obvious from day one that there has been great concern among these people about what is going to happen on this site. Many people tonight have taken time out of their day to come down here and express their opinions. Whether they have had to take off work, or get babysitters, or whatever they have had to do, they are here. So at the very least, I would like those who are here against this petition to stand up and let you know.

Mr. Jeffers: How many people do you estimate stood up?

Mr. Wischer: A pretty significant number of folks that are down here on a Thursday afternoon.

Mr. Jeffers: And you are charging them an hourly rate to be here.

Mr. Wischer: That's normally how I operate. I think you understand where we are coming from on that. The continuance is a necessary evil here. Our folks are not in favor of a commercial industry at that site. But we will do what we can to meet with Mr. Rheinlander and listen to their concerns and see where it goes from there. I don't think it is necessary for me to go through my laundry list of things I wanted to comment on tonight. We will address those with Mr. Rheinlander. But I can assure you it's extensive.

Ms. Whitsell: I am Nancy Whitsell at 4606 Cynthiana Road. I live directly across from the site. I wanted to correct your records. You said there was a small retail business on Kasson. If that was at the corner of Kasson and Cynthiana, that used to be the McDonald Photography. That was a large school house. It has now been purchased by Mr. Peterlin and is now going to be residential. I just wanted that corrected. Thank you.

Mr. Jeffers: The last time I drove to Blairsville, it was raining and foggy. I don't remember if I saw every billboard that might be between Mesker Park Drive and the Posey County line, could you refresh my memory as to how many large billboards there are in that area?

Ms. Whitsell: As you come down 66 as you hit 65, there is a billboard on the hill for Bassemiers. The only other one would be down at Angels at Mesker Park and 66.

Mr. Jeffers: So in that stretch from Mesker Park to Posey County, there is only two billboards at this time.

Ms. Stevens: Does anyone else wish to speak?

Mr. Cato: My name is Darrell Cato. I live at 4920 Highway 65, which is four residences away from this property. The main concern, there is not much traffic on this highway. It is the first road in that says Evansville when you come off 64. Farmers haul grain up and down this road all the time. There is 51 school buses that cross this intersection every day. German Township Booster Club is out there a half a mile away from this. There is 1,176 people that signed a petition that didn't want it, mostly from out there. Nobody on the south side of the road was even contacted yet. It is about knee deep in traffic. I had a good experience right before they fixed the road up. I went to get the newspaper and 71 vehicles passed before I got across the road, and 54 before I got back. That's a lot of traffic to think there's not much there. So when they said we could move the mailboxes to the other side of the road, that is what I did. But there is traffic galore there. Where they are proposing this road is right in the middle of the turn lane.

Mr. Herrin: I would make a motion for continuance to the July APC meeting.

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

Ayes: Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Mr. Wortman, Mr. Dunigan, Mr. Herrin, Ms. Stevens

Nays: None

There being 7 affirmative votes, Docket No: VC-11-2006 is continued to the July 13, 2006 Area Plan Commission meeting.

Docket No: 2006-22-PC VC-12-2006 Petitioner: Hugh Hazelwood

Address: (Complete legal on file.) 8100 Pollack Avenue

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

Mr. Mills: Hugh Hazelwood is requesting to change the zoning of a portion of his property located at 8100 Pollack Avenue from R-1 to C-4 with a Use and Development Commitment. This is a 0.2 acre site located on the north side of Pollack Avenue, just west of Indian Mounds Boulevard. Pollack Avenue at this location has no curbs or sidewalks, and the property is currently graveled to the street. Future commercial use of the site will require review and compliance with Site Review Committee recommendations. County Engineer John Stoll comments: "Numerous C-4 land uses require large semi trucks for deliveries. It appears that it would be difficult for this site to provide sufficient maneuvering areas for large semis on the site." Evansville MPO comments indicate that the small size of this site raises question of the ability to provide adequate parking or traffic circulation to prevent vehicles from backing into Pollack Avenue. This site on

Pollack Avenue was the former location of Knight Township Fire House # 7. The original block garage on this site was built in the mid 1930's, and was certified as a legal non-conforming commercial, neighborhood retail use by the Area Plan Commission in 1982. In December, 1989, the fire house was established on this site by approval of a special use permit by the Board of Zoning Appeals. The legal nonconforming commercial classification was abandoned by the owner of the site upon conversion to the public building use (fire station.) Two additions were made to the fire station during their occupancy of the site. This is a request to rezone the vacant site to C-4 with a use and development commitment to allow reestablishment of a commercial use on the site. The use and development commitment prohibits use of the site as a package liquor store and prohibits "adult" special uses on the site. The Comprehensive Plan Future Land Use Map designates this area as residential and undeveloped. Surrounding area is completely agricultural and residential.

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. Hazelwood has been sworn in.)

Mr. Hazelwood: I was supposed to be represented here today by Foster and Montgomery. Mr. Foster is on vacation and Mr. Montgomery was in an automobile accident last Friday and has been in and out of pain. I'm sure that's why he isn't here this evening. Hugh Hazelwood, 8100 Pollack.

Ms. Stevens: Do you want to continue on with this?

Mr. Hazelwood: I would like to continue on with this and see if there are any concerns you have.

Ms. Stevens: Are there any questions?

Mr. Kiefer: What are your plans there?

Mr. Hazelwood: I would like to lease it to anyone that would like to rent the property from me. I have had two inquiries so far. One fellow would like to show antique cars there. The other one talked about a tea and coffee delivery service. But I haven't advertised the property until I get the zoning. There is 37 feet from the edge of the road to the front of the building. Then the parking lot is 85 feet deep. We have never had any problems with people backing onto Pollack. You just don't do that.

Mr. Kiefer: Brad, did you say that under the current request, there would be some concerns on tractor trailers and other things getting in and out of it?

Mr. Mills: Yes, I did speak with Mr. Hazelwood and expressed concern that we had. It appears he has a gravel area to the left of the white building. He could have a single axle truck or box trucks that could pull in there and then back into the right-of-way. What would be a concern is his parking, if it is in front of the building, will have to be in the right-of-way

and they will need to get a right-of-way encroachment permit from the County. If he has any large semi trucks that come on the site, it will be very difficult for those to maneuver on the site. The potential is they might back out onto Pollack Avenue, which would be a safety concern. But speaking with Mr. Hazelwood, it appears to be his intention to rent it to a lower use of commercial that wouldn't require the large semis. I believe with a box truck or even a small semi, they could probably pull beside that building and then back in front of the property and not have to back out into the road. But we would need to see what he is proposing and then put our turning movement templates on his drawing to make sure those movements could be accommodated on his site so they wouldn't be backing onto Pollack.

Mr Hazelwood: Would that be addressed through the use permitting?

Mr. Mills: We would take a look at that at Site Review. But it is going to be difficult for us to police. We can't stand out there and watch for a semi that comes. The only way we are going to hear about it is if there has been an accident or if the neighbors complain that semis are backing out and blocking traffic.

Mr. Dunigan: Why have you chosen C-4 as opposed to a lower commercial class?

Mr. Hazelwood: It was my understanding, when I came down and said somebody wanted to store antique cars there, it would require a C-4. There is a number of uses like automotive that would require C-4, maybe installing stereos, that kind of thing.

Mr. Jeffers: You seem to be focusing on automotive services, whether it be storage or installation of equipment. So I wonder why the only uses that were offered to be restricted were adult uses? Why didn't you offer to restrict a lot of other uses that would require large truck deliveries?

Mr. Hazelwood: I couldn't think of a business that couldn't occasionally have a semi delivery. Even if you just had a flower shop, sometimes you have a major flower delivery.

Mr. Jeffers: I am asking that, even the uses you do anticipate like automotive would require large semi delivery.

Mr. Hazelwood: It is such a small property, I don't think anything I could police it for should require regular semi deliveries.

Mr. Jeffers: The neighbors adjacent, have you heard anything from them?

Mr. Hazelwood: Two of them are sitting over here. I have heard back from all of them.

Ms. Stevens: Mr. Hazelwood, do you want to continue forward with us voting tonight?

Mr. Hazelwood: I think maybe I should wait for my counsel.

Ms. Stevens: Is there a motion to continue this? (Motion was made and seconded.) Continuance fees will be waived.

Ms. Mills: My name is Cheryl Mills. I live at 8200 Pollack Avenue, right across the street from this. Our concerns are about semis. This is a very narrow and busy road. We are not sure exactly what C-4 means. Can I get some enlightenment on that?

Mr. Mills: C-4 allows a wide variety of uses. There are 175 uses in the C-4 classification. So it could be things like grocery stores, gas stations, any kind of clothing sales. We have auto repair, a number of different uses that could be in there. Some of them are not real compatible with the residential neighborhood. He has put exclusions in his use and development commitment that he would not do package liquor sales or adult book stores, adult theater, juice bar, adult massage parlor, nude model studio, sexual encounter show, peep show, adult arcade. So some of the very offensive ones he has eliminated. But there are some that are heavier uses that could generate noise and traffic. So those items have not been eliminated.

Ms. Mills: It is a residential area out there. Our other concern is the parking. There is not a large area for parking. The street is very narrow and busy and I am worried about that. I know when the Knight Township Fire Department was in there, a lot of times they would park on the boulevard because there wasn't enough parking.

Ms. Stevens: Okay. We have a motion and second for continuance and the continuance fee will be waived for one month, June 8, 2006. Call the roll.

Ayes: Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Mr. Wortman, Ms. Stevens

Nays: None

Abstention: Ms. Musgrave

There being 7 affirmative votes and 1 abstention, Docket No: VC-12-2006 is continued to the June 8, 2006 Area Plan Commission meeting.

CITY REZONINGS

Docket No: 2006-19-PC R-2006-9 Petitioner: Rogge L. Wytovak

Address: (Complete legal on file.) 3117 Broadway Avenue

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

Mr. Mills: Rogge Wytovak is requesting to downzone his property located at 3117 Broadway Avenue from C-4 to R-2. This is a 0.17 acre residential lot located on the north side of Broadway Avenue, between Delmar and Ewing. Mr. Wytovak proposes to downzone this small C-4 zoned site to bring the existing residence into conformance with zoning code restrictions and to remove the legal nonconforming status designation and

the accompanying legal nonconforming restrictions from the site. This downzoning to R-2 is consistent with the adjacent residential neighborhood development and is appropriate to the small size of the lot which makes the provision of adequate on-site parking for commercial use of the site difficult. Surrounding is an older area of very mixed zonings and uses. The strip along the frontage of Broadway Avenue from Barker Avenue to Stinson Avenue was strip zoned to C-4 by the City in the mid 1950's. All of the residences which remain along both sides of this commercial strip 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? (Mr. Wytovak has been sworn in.)

Mr. Wytovak: My name is Rogge Wytovak, 3022 Hartmetz Avenue. I am just trying to get this into residential because I have been told that to resell, often times the banks don't want to loan on a residence on a commercial zone.

Ms. Stevens: Are there any questions? 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. Wortman, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

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

Docket No: 2006-20-PC R-2006-10 Petitioner: Luke Sharara, First Development, Inc.
Address: (Complete legal on file.) 2801, 2805 Covert Avenue
Nature of Case: Change from a C-1 zone to a C-4 zone.

Mr. Mills: Luke Sharara and First Development, Inc. is requesting to rezone the properties located at 2801 and 2805 Covert Avenue from C-1 to C-4. This is a 0.27 acre site located at the southeast corner of Covert and Hawthorne Avenues. The Comprehensive Plan advocates good access management in minimizing curb cuts and encouraging access onto side streets where commercial development does occur. Mr. Sharara's site plan indicates a single curb cut onto Covert Avenue on the 92 feet of Covert Avenue frontage. The use and development commitment signed by the owners of these two lots and the lot adjacent to the east of this site in 1992 indicates that the curb cut on Covert Avenue shown on this site plan must also serve as commercial access for the C-1 zoned lot to the east which has not established any commercial use to date. Mr. Sharara's site plan must be redesigned and submitted for Site Review approval in compliance with standards established in the Comprehensive Plan and the Evansville

MPO Access Standards Manual, as well as the standards specific to this site established upon the initial change of zoning in 1992 to allow commercial development at this intersection. Mr. Sharara's submitted site plan would require numerous variances; it must be totally redesigned to comply with access, parking, green space, and setback requirements. This site is adjacent to a residence to the south and to the east, and the minimum 10' grass buffers adjacent to these residences must be maintained. Grass setbacks on front and corner side yards are necessary to insure traffic visibility at the intersection. Compliance with all code requirements will be addressed by Site Review upon submission of plans for the development of the site. This site is located in an older area of mixed zonings and uses, predominantly residential, with scattered commercial development along Covert. Mr. Sharara is seeking to change the zoning classification from the existing C-1 neighborhood commercial classification to unrestricted C-4, the highest commercial classification. The Comprehensive Plan calls for the preservation of neighborhood development by the exclusion of those commercial uses that would materially alter the neighborhood character. In some instances, the lowest intensity commercial uses could be an appropriate buffer adjacent to residential. However, the C-4 classification allows the highest-intensity commercial uses. Many uses permitted in the C-4 district are considered incompatible and inappropriate adjacent to 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. Sharara has been sworn in.)

Mr. Sharara: My name is Luke Sharara, 6522 Hillsgate Court, Newburgh. I am here representing Mr. Price and Mr. Presley, the current owners of 2801 and 2805 Covert. I also represent the potential purchasers of the properties. They are interested in an 18 lot car lot, new and pre-owned vehicles. We have presented the petition from C-1 to C-4 in an attempt to combine both lots and achieve that use. We talked to the adjacent neighbors, all of which seem to have no problem with the proposed use.

Ms. Stevens: Are there any questions?

Mr. Dunigan: I would have the same concerns with this rezoning as with the previous one. It is not necessarily the use you are proposing now, but the uses that could in after the fact that could potentially be harmful with a blanket C-4 zoning.

Mr. Sharara: We are prepared to exclude whatever needs to be excluded to guarantee the proper use. The potential purchasers are only interested in a car lot. They aren't interested in anything else. So if there is anything you want signed off on, we are prepared to do so.

Mr. Harrison: What that would require would be a use and development commitment. The Area Plan Commission has forms that can be completed to exclude certain uses or say this would be the only use that would be used on this property. The unfortunate thing is that, in order to do that, you can't do it today. You would have to refile and come back

next month and you have to renotify everyone again. It may be that the Commission would waive any filing fee to do that. So if that is something you want to do, I'm sure the Commission would consider that.

Mr. Sharara: We are ready to do that. The only issue is that we have a current purchase agreement on both properties. There is a contingency for the purchase. Currently it is in June. The purchaser may decide to purchase the property at C-1, but the contingency indicates they would like for it to be C-4. There is going to be a slight conflict. So if we can get some form of approval or if we can meet that deadline, ...

Ms. Stevens: The next meeting is June 8. Do you know what your expiration is on your contract?

Mr. Sharara: It is June 16.

Mr. Mills: Then it goes to the July City Council. So there won't be an approval in June. It would just be a recommendation by this body.

Mr. Sharara: We could try. The other option would be to continue with it as it is right now.

Mr. Harrison: Whatever happens here, it still has to go to City Council.

Mr. Sharara: Well, in that case, we would like to continue with it. But I understand there is a form that has to be filed. Our desire is not to have a blanket C-4. We did not know, we thought the site plan would be sufficient to cover the specific use. We didn't know there was a form that had to be filed.

Ms. Stevens: It really isn't the site plan as much as what Mr. Dunigan said. We understand that is what your intention is, but what happens, this zoning stays with this property forever. So those 175 uses Mr. Mills talked about earlier, when this property is sold as a car lot, somebody could come in and put anything on that property. That is where our concern is.

Mr. Harrison: Keep in mind if this goes forward and goes to City Council and they want to see a use and development commitment, then you are going to be stuck until August.

Ms. Stevens: And if it is not approved if we vote on it tonight, you have to wait a whole year to come before us again.

Mr. Sharara: So we can proceed forth with it today, but we will do the use and development before the City Council?

Mr. Harrison: If you file the commitment, you will have to come back here again.

Ms. Stevens: So it delays it one month. We could do a continuance with no fees. Then you come back here June 8 with the new petition and use and development commitment

attached. Then it goes to City Council and so you will really only be a month behind. But if we vote on it tonight and send it to City Council and if they require a use and development commitment, then you are two months behind.

Mr. Sharara: If I had known that we needed go file a use commitment, we would have done it without problem.

Mr. Mills: What you could do now is, if you would like for it to proceed forward and get an opinion from the board on what they would recommend to the City Council, allow it to proceed as you are doing now, get a vote. If the vote comes with a negative, you can still file a use and development commitment. It would put you back another month, but you wouldn't have to go to City Council with a do not pass recommendation. So you can take your chances now. Then you could still file the use and development commitment next month. And then go forward with a more restrictive C-4.

Mr. Sharara: Okay. That's what I'll go then.

Mr. Jeffers: Ms. Stevens, to make it clear to myself and the petitioner, there's eight members here. One will probably abstain because he is a City Councilman. So you have seven members here and it takes seven votes to get a positive recommendation. Our body just recommends and we are recommending to the City Council either approval or denial. That will be our recommendation. If seven of us vote yes, then we are recommending to the City Council that they allow it. If six of us vote yes and one votes no, then it goes forward without any recommendation. So that is just a neutral. City Council can overrule us. But if four of us vote no and three vote yes, that is a recommendation to

Mr. Harrison: It is still no recommendation.

Mr. Sharara: If it is a no recommendation, then I still can constrain that C-4 with a use commitment and appear again.

Mr. Mills: Yes. If you file the use and development commitment by Monday, you will go to the June meeting.

Mr. Sharara: Are there going to be additional charges with that?

Mr. Harrison: If they vote on it, you are going to have to pay a fee.

Mr. Mills: If we take a vote, we won't charge. But you will still have to renotify.

Mr. Jeffers: We can make the motion to approve in such a way that he would not be charged a fee.

Ms. Stevens: It sounds like you want us to take a vote.

Mr. Sharara: Yes, I would like to do that as long as there is a way for me to reapply and fix things.

Ms. Stevens: Are there any remonstrators?

Ms. Musgrave: Have you met with your neighbors?

Mr. Sharara: Yes. They had no problems.

Mr. Dunigan: Did you explain to them you were going to put a car dealership there?

Mr. Sharara: I explained we were rezoning from C-1 to C-4 and that it would be a car dealership. I met with some of them a couple of times. They were all very amicable about it. There were no problems.

Mr. Harrison: The only thing is, with a use and development commitment, that will be the case with the property. With the property, the way it now, it is possible that in two years it could be something else.

Mr. Sharara: But we have no intention of doing anything but this.

Mr. Harrison: But if it is sold to somebody else, it could become something else.

Mr. Jeffers: You have no intention, but there is a McDonald's across the street. Anywhere McDonald's locates, anyone with commercial interest wants to locate.

Mr. Wortman: I will make a motion for approval.

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

Ms. Musgrave: (During roll call.) I am not sure about this. I would rather see a use and development commitment, so I will vote no.

Mr. Dunigan: (During roll call.) Without the use and development commitment, I am going to vote no.

Ayes: None

Nays: Ms. Musgrave, Mr. Wortman, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Ms. Lowe, Ms. Stevens

Abstention: Mr. Kiefer

There being 7 negative votes and 1 abstention, Docket No: R-2006-10 goes forward with a recommendation for denial.

Mr. Sharara: From this point, we just reapply with the use commitment?

Mr. Jeffers: I move that he be allowed to reapply in any manner he wishes, but as long as it has a use and development commitment attached, it not have a fee. Any newspaper fees or fees not associated with the Area Plan Commission not be waived.

Ms. Stevens: We have a motion and second.) (Voice vote.) Upon unanimous voice vote, the continuance fee is waived.

Mr. Harrison: You will have to refile by Monday.

TAPE CHANGE

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 subdivision.

Part of Section 26, NW T5S/R11W German Township Map CO-112
Located at the intersection of Fischer Road and Kissel Road.

Mr. Mills: The Wargel Minor is a 2-lot residential subdivision on 7.8 acres located at the northeast corner of Fischer and Kissel Roads. The site is zoned Agricultural and contains an existing home on Lot 2. The Area Plan Commission address maps indicate that in the past this parcel was part of a much larger tract located to the north. Over the years this parent parcel has been split into three distinct properties, two of which are owned by Ronnie & Phyllis Ingram. The divisions of the parent parcel were not created through the subdivision review process and as such are not in conformance with the County Subdivision Code. The applicant owns and proposes the Wargel Subdivision on the third and southernmost of these three properties. The two northern properties do not have road frontage as required in the Subdivision Code, and the proposed subdivision would use all of the frontage that the parent parcel currently has. Thus the proposed plat would leave these properties landlocked. The only other possibility for frontage is that the Ingrams also own 6.35 acres along 320' of Fischer Road to the west of the remaining parent parcel.

The Subdivision Review Committee reviewed this plat on April 11, 2006. At the Subdivision Review Committee meeting the applicant was notified that the division of property must either be done through the subdivision process or must meet parcelization requirements. It was suggested that the applicant research and submit documentation that these parcels existed in 1957 as they are today to be considered exempt from the subdivision review process, or work with the owner of the remaining parent parcel to combine their three properties into one parcel with a new deed. Combining the parcels would bring the remaining parent parcel into compliance with the Subdivision Code.

On April 17, 2006, the Area Plan Commission received a letter from the applicant's representative requesting that the Wargel subdivision be placed on the agenda for the May 11, 2006 APC meeting."

The proposed plat shows that both lots will have frontage on Fischer and Kissel Roads.

The County Engineer's comments on this plat are:

Provide a 25' right-of-way dedication from the centerline of Kissel Road.

The Evansville MPO's comments are as follows:

Additional right-of-way (a variable amount) is needed along Kissel Road to maintain a total of 35' from the centerline.

Submittal of a drainage plan for approval by the County Drainage Board is not required for minor residential subdivisions. Comments from the County Surveyor recommend that the plat show the natural watercourse on Lot 1 and include a note prohibiting the construction or placement of obstructions in the watercourse.

Water and Sewer Department comments are:

Sewer is not available.

According to the German Township Water District, German Township water is available at the site.

County Health Department comments are as follows:

A dye test is required for any existing dwelling.

If Lot # 1 is to be used as a building site it must have a soil test.

The APC staff recommends that if the Wargel Minor plat is to be approved, the conditions mentioned in the staff field report including the condition to combine the pieces of the parent parcel together with the 6.35 acres to the west, should be placed on the approval. Also, if you look on your desk, you should have received a color map that depicts what we have been trying to describe. You can see on the map the red bold line is the parent parcel as we show in our records. The subdivision is the dashed orange color on the bottom of the page. Then the yellow two lots are the parcels to the north that are owned by the Ingrams which you can see theirs outlined in blue to the left. That describes the locations.

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. Sermersheim: My name is Bret Sermersheim with Morley and Associates. I am representing Greg Wargel, the owner. We were approved at Sub Review. The only reason we are here is we wish to get the comment to have the Ingrams combine all their property into one. Mr. Wargel has owned the property since 1981. We don't feel it is our duty to correct any problems or mistakes or oversights by previous planning commissions. It doesn't state in the Subdivision Ordinance that if the current plan commission staff finds an error, that the first person that comes in needs to correct everything. Everybody is holding to this 1957 ordinance that states that it is a lot of record, which we have done an extensive search. We cannot find that document. So nobody really knows what the 1957 ordinance says, what a lot of record is. I have the abstract. The current planning commission is saying that all the other parcels are in compliance. I don't know if they were thinking if those were divided off before 1957. But based on my research, there was nothing divided off before 1957. However, the planning commission approved everything. They did not make anybody else subdivide. Building permits were issued. So our particular piece meets the parcelization requirements. The parcels that the Ingrams own, they don't really need access. They are farmed parcels and if they wish to sell those and build a house there in the future, before they could get a building permit, they would have to do the subdivision process. We don't feel that we should incur the cost to do this.

INAUDIBLE QUESTION

Mr. Sermersheim: That is the Ingrams'. That is the parcel they were talking about that they could have road frontage on. I talked to Mr. Jeffers. There were comments about

drainage. The reason you see the small piece going out there, Mr. Wargel thought if in the future that would be a possibility to divide that up one more time to get 2.5 acres. He doesn't have any prospects on that. We are just looking ahead to the future. There is a drainage swale coming through there. We sized a pipe to try to meet any drainage concerns for that.

INAUDIBLE QUESTION

Mr. Sermersheim: Yes, we made it 60 foot.

INAUDIBLE QUESTION

Mr. Sermersheim: It is 20 foot, my guess. We are not a high use. We don't know if that will ever happen. We just don't want to limit our options. The only reason we came here was to waive the requirement to have somebody that has no, they could care less, it is like we need to go to them to do something. Whereas, if we continue on that process, I think you are looking for problems because not all neighbors are neighbors. In the Sub Review, it was quoted, "we are going to hold you hostage on this particular piece." I don't think that was right because if you go to your neighbors, first of all, we are being asked through the Ingrams to put that together. They are not going to do it at their own expense. We are going to have to pay for their lawyer fees. They, in turn, could say they want to do this or that, want \$5,000 or whatever, and they may...

Mr. Mills: Have you approached them? Have you asked them?

Mr. Sermersheim: No.

Mr. Mills: Then how do you know they wouldn't agree to this?

Mr. Sermersheim: I do not know.

Mr. Mills: I would like to take exception to the fact that you are saying that the previous area planning commission has approved these division of lots. State law allows people to go and sell off parcels without coming to us. So you are assuming that we had knowledge and that we approved the division of those lots in the back. Do you have proof that we approved those divisions in the lots? The two parcels that are in the back separated off from the parent?

Mr. Sermersheim: No we don't. I am just saying that theirs were divided. The ones I am saying is along the front. The plan commission never brought those up. They are saying they are in compliance. That they are lots of record. What we are hearing is that a lot of record is anything before 1957. The first time any parcel was divided up which is the first at the point in the Ingrams', that was the first parcel that was divided up. That happened on May 6, 1959. It was issued a building permit. They built their house based on the Assessor's web site in 1960.

Mr. Jeffers: On the blue...

Mr. Sermersheim: On the piece south of it. The piece to the east, that was split off the first time in 1969. So that would have been the first piece that would have been accepted by the planning commission since the planning commission came into existence in 1968. Before that time, it was a metro planning commission.

Ms. Stevens: So your objection is to the conditions where they say prior to recording to provide documentation that the property is comprising of the parent parcel are lots of record and existed since as of 1957; or documentation that the two properties in the remaining parent parcel and the third property to the west with frontage to the west on Fisher Road all currently owned by the Ingrams have been combined into one parcel in a new and recorded deed.

Mr. Sermersheim: Right. We are objecting to putting it into one deed. Right now it is three tax codes. They wanted it to be one tax code.

Ms. Stevens: So, to Mr. Mills' question, you don't have any idea whether they would put all that into one parcel, is that what you are saying?

Mr. Sermersheim: That's right. We feel that that is not our duty to do that. This parcel has been around for 26 years. I know if we would have went to Sub Review four years ago, this would have been no problem. We would not have had this recommendation.

Mr. Jeffers: Why not?

Mr. Sermersheim: Because none of this ever came about for these parent parcels.

Mr. Jeffers: I recall for years, we wondered about whether or not we might be landlocking parcels. I am not sure.

Ms. Stevens: This is a common request of the Area Plan Commission. Do you have any problems with any of the other conditions?

Mr. Sermersheim: No. I have already changed the plat, granted the right-of-way. We have to get the dye test.

Ms. Stevens: So just to narrow down what your objection is, it is what I just read?

Mr. Sermersheim: Yes. We just object to having to go to our neighbor, having to put it into one deed. What I am reading in the subdivision ordinance INAUDIBLE....these parcels don't need any access. They are just farm pieces.

Mr. Dunigan: I understand that our goal is that the parent parcel is not land-locked. However, to require someone who doesn't own the parent parcel to provide the right-of-way when the people that do own the parent parcel have the right-of-way, I guess I am

struggling with that. You weren't certain that they are going to allow the right-of-way on 6.35 and you don't want to create a land-locked parcel.

Mr. Mills: What our position is, property can be deeded off to anybody by state law. However, we do have a subdivision ordinance that has the requirement that they have certain size lots, certain frontage requirements, water, sewer, a number of things. What we are saying is that, with this property, we are finding out after the fact that it has been divided off. They are asking us to not enforce our subdivision ordinance which requires that all division of lots after that time we established that it has to be done through the subdivision process. This portion of the property has been divided off of the back half, which will be landlocked and will not have frontage. What can happen then is one of those two lots be sold in the back to someone and then they will come to us and want a building permit and we will say we can't give them one, but they have just spent the money on the lot. So we would be the bad person because we can't issue them a permit. So how we find these things, and it is typically after the fact is when a person comes in and they have carved the piece off and we now see that this has been taken from the parent tract. That is when we ask that it be cleaned up. Obviously the engineer and the owner have decided that they don't even want to talk to the neighbor and try to clean it up. They are just going to come to us and complain that we are being unreasonable.

Mr. Jeffers: I heard that we were holding them hostage.

Mr. Sermersheim: That was stated in Sub Review. That was Mr. Mills that turned around and stated that he was going to hold me hostage. That is one thing that irked me. I didn't think that was appropriate.

Mr. Jeffers: Well, we have no record of that statement.

Ms. Stevens: I have a question for counsel. On these top two conditions, and I understand Mr. Mills' point. At some point you do have to correct mistakes. And we are trying to move forward with the correction. My question is, can we make this a condition through the Subdivision Ordinance?

Mr. Wargel: I am Greg Wargel, the owner.

Ms. Stevens: Let me read the conditions. 1. Prior to recording, provide documentation that the properties comprising the parent parcel are lots of record in existence as of 1957; or, documentation that the two properties and the remaining parent parcel and the third property to the west with frontage on Fischer Road all currently owned by the Ingrams have been combined into one parcel in a new recorded deed. 2. Revise the plat to show and label the natural watercourse on the site as an "NWC" prior to recording. 3. Add a note to the plat prior to recording that states: "Strips or areas of land marked "NWS" Natural Watercourse are designed designated for the conveyance of surface water and shall not be obstructed. 4. Prior to recording, revise the plat to show a 25 foot right-of-way dedication from the centerline of Kissel Road. 5. Provide documentation that the

Health Department has approved the results of the dye test for the existing house on Lot 2 prior to recording. Those are the conditions in question.

Mr. Harrison: The first part of that, you indicated that you can't provide documentation that the property is comprised into parent parcels or lots of record in existence as of 1957.

Mr. Sermersheim: That's correct. Nothing in this was divided before 1956. INAUDIBLE PORTIONS....I think the original house was built in 1949. From there, everything started being divided off.

Mr. Harrison: The next part of the condition would "or, document that the two properties and the remaining parent parcel and the third property to the west with frontage on Fischer have been combined into one parcel in a new recorded deed." And you say you don't want to try to do that.

Mr. Sermersheim: If we have to, that is what we are going to have to do. But that is why we are here. It is just because of the human nature...

Mr. Harrison: Maybe we can speak with the neighbor in just a minute. But I want to get this narrowed down. So the first part is out. It is just that second part. Then, the other conditions you seem to be comfortable with. Is that correct?

Mr. Sermersheim: Yes.

Mr. Harrison: Can you sit down for one minute and we can speak with your neighbor and see what she has to say.

Mr. Jeffers: Before we do that, the proposed Wargel minor sub comprises two lots that together makes 7.8 acres. Is that what we are looking at?

Ms. Stevens: Yes.

Mr. Jeffers: I believe the petitioner is representing that he bought that 7.8 acres in 1981. It was first chopped off what is labeled as remainder parent parcel of 14.27 acres in 1979. Then is Kissel an accepted County road? Okay, they do maintain it at this time.

Ms. Ingram: My name is Phyllis Ingram, 9001 Fischer Road. This quarter section was bought by my great-great grandparents. This has been in the family over 100 years. There was another house before 1949, but it was another home place. I bought this property with my husband. The 6.35 acres we paid cash for in 1971 because we wanted to build a house and you had to have it paid for. We bought the 7.57 acres on contract with my great-uncle because we didn't have enough money at the time. We paid that off. Then my neighbor and I got concerned about housing projects behind us and she tried to buy it and my great-uncle said he didn't want to sell it. So we went down to his house a month later and he said he would sell it to us. So that is why we have three deeds. So we have three deeds and as far as we are concerned, that is one piece of property and it

is ours. Personally I wrote some notes. We don't understand the 60 foot strip that is needed to go down the side of that property. That is adding another road that I don't think we need. I think he wants to split that off in the future which, making two lots out of that, that is his business. But the 60 foot strip is a very deep gully. There is a hill and property above this that has a wash off and runoff there and it runs down that 60 foot strip. When that strip goes down through there INAUDIBLE-AWAY FROM MIC.... 8-10 feet wide that are eroded really bad. I am concerned that that road is going to shove more water down through there. This is all wooded and natural. It goes into a creek there, but there's also an eroded creek on the other side. But nobody would ever be able to build back there because of the water. I want to know how he intends to help this flooding problem. I could never get back there because it is all landlocked unless I want to get a bulldozer and build a road to this flat spot. Formerly we have had problems in the country with people riding four-wheelers. I would love to have a fence across there. When you buy country property, you don't want to see other people. If you are sitting at my house, you don't see anybody. We are hoping this will be a nice calm change for him and for us. But my neighbor and I, she doesn't understand the 60 foot.

Ms. Stevens: Does Mrs. Darnell own all of that?

Ms. Ingram: Yes. She owns those three plots. She bought the first plot. Then she bought the second plot from my uncle. INAUDIBLE-AWAY FROM MIC...

Ms. Stevens: You stated that you consider it one. Do you have a problem combining it?

Ms. Ingram: If it costs me money, yes.

Ms. Stevens: What if it doesn't cost you money? You heard what Mr. Mills is saying. In the interest of, some day you or your kids might want to sell that.

INAUDIBLE

Ms. Musgrave: Mr. Harrison would be able to give you a better guide. But taking three legal descriptions and making one deed, it shouldn't cost you anything because I think that they should be able to write that up themselves. It is the filing fee.

Mr. Harrison: I suppose they might be able to work with you on that. If you are agreeable to signing that deed and having it recorded, that would probably help everybody out.

Ms. Ingram: Would we still have to have that road through there?

Mr. Jeffers: You have described a lot of evolution of land ownership here. So whether you and your husband want to sell any of the three parcels you own, you can see over time, you may wish to sell. So right now you have three parcels that aren't connected and two of them have no access. How are you going to give these people access? You are wondering how this man may provide access to a part of a parcel that he is legally able to subdivide in the future because it would be 5.3 acres. He is able to chop that up into two

parcels. How are you going to provide access to the 7.75 acres and the 6.7 acres? How are you going to do that?

Ms. Ingram: You see how much frontage she has on Kissel? The same thing.

Mr. Jeffers: The same thing he is doing.

Ms. Ingram: No, he is doing it in two directions. He is going from the front and the side.

Mr. Jeffers: Right. But he is providing access to a County road. He is providing for future access to the County road. And Fischer is in better shape than Kissel. So he is taking a practical step to provide access.

Ms. Ingram: It is black top.

Mr. Jeffers: It is wider. So he is just taking practical steps at this time to provide a future access.

Ms. Ingram: It seems like so much more effort and expense to have to manage a second driveway when he can have two real easy.

Mr. Jeffers: I don't think he has any intent to build a driveway there at this time. I asked his engineer to add a note to the plat that he couldn't do anything to obstruct the flow of water. That has been added. What the Commission is here trying to do is provide access not only for him but for you as well, legal access.

Ms. Ingram: It is all or nothing.

Mr. Jeffers: I am still wondering if the approval of this plat without the conditions that staff has applied will result in landlocking these two remainder lots in the parent parcel.

Mr. Mills: I believe Ms. Ingram said she would agree to sign a deed that would combine her three lots into one. Did you not?

Mr. Jeffers: If someone else pays for the preparation of the deed.

INAUDIBLE CONVERSATION

Mr. Sermersheim: I asked her when this came up. She said she has three different deeds and I asked if we would take those three deeds and throw them onto one deed, do not change any of the descriptions at all. At first they said they wanted to put it all into one. But that would require a survey. One parcel starts up at this corner. The other one starts down at the extension of the red line. When you come from different corners, there is naturally going to be a problem. So I said to do that, you would have to do a boundary survey. But they came back and said to throw them all on one deed and combine them into one tax code. That will help Ms. Ingram out because then she will for sure get one

tax bill. Based on what I know on the current parcelization, there will never be access. It use to be, if you had a road going back there, any dirt road, you could get access off of it. So long as it fronted 60 feet. The way the conditions are now, if you look at the 2003 aerial photo, you don't see a road on there. It will never be parcelized. I don't know how they do that. I came here. I didn't want to cause problems. I know this could cause problems with the neighbors. If Ms. Ingram is fine with that, we will work with them on that.

Ms. Stevens: I think we have established that if you can work together, we can address that condition and you don't have a problem with the other conditions. So I think we have addressed all that.

Mr. Jeffers: So are you saying your client is willing to pay for Mr Ingram's three legal descriptions to be combined on one document and recorded and your client is willing to pay that cost?

Mr. Sermersheim: If the only way to get this through is that, then yes we will have to pay. We shouldn't have to make that an extra expense on our costs for a condition that has been around. The Plan Commissions in the past, when they got building permits from 1959 one, these probably should have been caught. But I know ...

Ms. Stevens: That's why we have an ordinance.

Mr. Sermersheim: I understand what the Plan Commission is doing.

Ms. Stevens: We are trying to catch these things.

Mr. Sermersheim: We are saying, is there any way to take the Ingrams...we know that is a problem. So flag that so any time something happens, when we do a, when people come to you and say divide that off. It is our practice in our company. They say write a 2.5 acre piece. We will write them a 2.5 acre piece. However, on our description, we tell them that this is not a buildable lot based on the Subdivision Ordinance to keep us out of trouble. Because people do go out and sell these. I know that is not the practice with all the companies out there.

Ms. Stevens: We appreciate your position; and we appreciate Ms. Ingram's that she is willing to do it because had she said she wasn't willing to do it, we would still be here.

Mr. Sermersheim: If you get neighbors that hate each other, this would never go through and Mr. Wargel would have lost \$5,000 all for nothing.

Ms. Ingram: He was talking about the road. We still do maintain it from the front to the very back of the property, the same road that was the farm road, and we keep it open to be able to drive from the front to the back. So we still do.

Ms. Musgrave: I would make a motion to approve, subject to the conditions you are about to read into the record.

Ms. Stevens: We have a motion and second, subject to the following conditions: 1. Prior to recording, document that the two properties in the remaining parent parcel and the third property to the west with frontage on Fischer Road (all currently owned by the Ingrams) have been combined into one parcel in a new, recorded lot. 2. Revise the plat to show and label the natural watercourse on this site as an "NWC" prior to recording. 3. Add a note to the plat prior to recording that states: "Strips or areas of land marked "NWC" Natural Watercourse are designated for the conveyance of surface water and shall not be obstructed." 4. Prior to recording revise the plat to show a 25-foot right-of-way dedication from the centerline of Kissel Road. 5. Provide documentation that the Health Department has approved the results of the dye test for the existing house on Lot 2 prior to recording.

Mr. Sermersheim: Ms. Ingram said that she would do that. Just say her husband would say no?

Mr. Mills: Come talk to us if that happens.

Ms. Stevens: She did say on record that she was speaking on behalf of her husband. We have a motion and second. Call the roll.

Mr. Jeffers: (During roll call.) Assuming that the two remaining parent parcel lots are not landlocked, I vote yes.

Mr. Kiefer: (During roll call.) Also agreeing with Mr. Jeffers, I vote yes.

Ms. Musgrave: I agree with Mr. Wortman and Mr. Jeffers.

Ayes: Mr. Wortman, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Kiefer, Ms. Lowe, Ms. Musgrave, Ms. Stevens

Nays: None

There being 8 affirmative votes, Docket No: 7-MS-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