

**THE AREA PLAN COMMISSION OF  
ST. JOSEPH COUNTY, INDIANA**

**MINUTES**

Tuesday, August 18, 2015  
3:30 p.m.

4th Floor, Council Chambers  
County-City Building, South Bend, IN

**MEMBERS PRESENT:**

Daniel Brewer, Adam DeVon, Steve Vojtko, Oliver  
Davis, John DeLee, Robert Hawley, Karl King, John  
R. McNamara, Elizabeth Maradik, Gerry  
Phipps, Phil Sutton, Jerry Thacker

**MEMBERS ABSENT:**

Ted Penn, Thomas England, Robert Schrock

**ALSO PRESENT:**

Larry Magliozzi, Angela Smith, Matthew  
Chappuies, Jennifer Parcell; Staff Mitch  
Heppenheimer; Counsel

**PUBLIC HEARING - 3:30 P.M.**

**1. REZONINGS:**

- A. A combined public hearing on a proposed ordinance of Trent Runyon & Leah Hudson-Runyon to zone from MF1 Urban Corridor Multifamily District to SF2 Single Family & Two Family District, and seeking a Special Exception Use to allow for an accessory dwelling unit, property located at 803 West Washington Street, City of South Bend - AS TABLED - APC# 2743-15.

**KARL KING:** We have a request from the petitioner to withdraw this petition from any further consideration.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, the combined public hearing on a proposed ordinance of Trent Runyon & Leah Hudson-Runyon to zone from MF1 Urban Corridor Multifamily District to SF2 Single Family & Two Family District, and seeking a Special Exception Use to allow for an accessory dwelling unit, property located at 803 West Washington Street, City of South Bend, is **WITHDRAWN** from any further consideration, per the request of the petitioner.

- B. A combined public hearing on a proposed ordinance of Mishawaka Federal Bank (a.k.a. Mutual Bank) to zone from LB Local Business District to CB Community Business District and seeking the following five variances: 1) from the required perimeter and residential bufferyard landscaping to the existing landscaping, as shown on the site plan; 2) from the required 30' front yard setback for off-premise signs to 5' along Ireland Road and to 14' along High Street; 3) from the required 200' linear separation between an off-premise sign and a residential district to 0'; 4) from the required 100' radial separation between an off-premise sign and a residential district to 55'; and 5) from the required maximum 2 displays per off-premise sign surface to a maximum of 11 displays, property located at 742 East Ireland Road, City of South Bend – AS TABLED - APC# 2744-15.

**KARL KING:** We have a request from the petitioner to table this until the September 15, 2015 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, the proposed ordinance of Mishawaka Federal Bank (a.k.a. Mutual Bank) to zone from LB Local Business District to CB Community Business District is TABLED to the September 15, 2015 meeting of the Area Plan Commission.

- C. A combined public hearing on a proposed ordinance of County Development, LLC to zone from R: Single Family District, B: Business District and C: Commercial District, (County) to CB Community Business District (City), and seeking the following ten variances: 1) From the required minimum residential bufferyard of 20' to 12' for parking on the south and east property lines as shown; 2) From the requirement that outdoor seating shall not be located between a building line and a residential bufferyard to allow for outdoor seating between the south building line and the south residential bufferyard; 3) From the maximum height of 36" in height for a fence located in a minimum front yard to 6' in height for a fence along Hollywood Boulevard; 4) From the required screening of trash containers to none; 5) From the requirement that trash containers not be located between the front façade of the primary building and the front lot line to allowing trash containers between the west façade of the primary building and the front (west) lot line; 6) From the required "bail out" lane for drive through facilities to none; 7) From the required landscaping of required perimeter yards and residential bufferyards to landscaping as shown on the site plan; 8) From the required foundation landscaping to landscaping as shown on the site plan; 9) From the required off-street parking area screening to none on the east, west, or south parking areas; and 10) From the required no off-street loading between the front lot line and the front façade to allowing loading spaces between front (west) lot line and the west building façade, property located at 23530 State Road 2; 56575, 56589, 56605 Mayflower Road; 23562, 23580 Huron Street; 56546, 56576, 56586 and 56660 Hollywood Boulevard, City of South Bend - APC# 2747-15.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from C: Commercial District, B: Business District and R: Single Family District in unincorporated St. Joseph County to CB Community Business District in the City of South Bend, and seeking ten variances from the development standards. On site is an existing restaurant zoned C: Commercial District, and vacant single family homes zoned R: Single Family District and B: Business District. To the north is an integrated commercial center zoned C: Commercial District in the County. Across Western Avenue is a church zoned B: Business District in the County. To the east across Mayflower Road is a gas station and a lawnmower sales shop zoned GB General Business District and single family homes with screening fences zoned SF1 Single Family & Two Family District, all in the City of South Bend. To the south are single family homes and a tavern zoned R: Single Family District in the County. To the west across Hollywood Boulevard are single family homes zoned R: Single Family District and B: Business District in the County. The CB - Community Business District is established to provide a location for high volume and high intensity commercial uses. Activities in this district are often large space users which may include limited amounts of outdoor sales or outdoor operations. Developments within the CB District shall be coordinated to facilitate vehicular and pedestrian access from nearby residential districts. The 8.4 acre site will contain an existing restaurant on the northeast corner and a proposed 40,000 square foot grocery store, which will front on Mayflower Road. The petitioner has filed a petition to vacate Huron Street. The proposed site plan includes 296 parking spaces for the grocery store and 61 spaces for the restaurant. A variance has been requested to allow the employee parking to encroach into the 20' residential bufferyards along the south and east property lines. A combination of Type B partial screening and a 6' ornamental fence with

arborvitae evergreen trees are proposed along the majority of the bufferyard with lower shrubs along the access drive into the site. The petitioner is providing increased buffering along Hollywood Boulevard, including landscaping and a solid ornamental fence. Parking screening is proposed along Western Avenue. Along Mayflower an ornamental fence is proposed. In 1966, the southwest corner of Western and Mayflower was rezoned to C: Commercial District, subject to a final site development plan for a restaurant. The southwest corner of Western and Hollywood was rezoned to C: Commercial District in 2009. Western Avenue is a four lane divided highway with turn lanes at the intersection with Mayflower. Mayflower Road has two lanes with a left turn lane at the intersection with Western. Huron Street and Hollywood Boulevard have two lanes. This site will be served by municipal sewer and water. The County Surveyor, the Department of Community Investment, and County Engineering offer a favorable recommendation. City Engineering has not yet provided comments. The petitioner is not proposing any written commitments. Staff is requesting a written commitment for no off-premise signage on site. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006) Policy ED 4.6: Encourage business investment that actively seeks to employ and promote a diverse workforce; and Policy LU 2.2: Pursue a mix of land uses along major corridors and other locations identified on the Future Land Use Map. The future land use map identifies this area as mixed use and low density residential. There are no other plans in effect for this area. Western Avenue into the City of South Bend has developed as a commercial corridor, which includes several other large retail buildings, gas stations, restaurants, shopping plazas, and car lots. The area between Mayflower Road and Hollywood Boulevard, bordered by Western Avenue and Sample Street have remained predominantly residential, with the exception of the properties along Western Avenue and Sample Street, which have developed as commercial. A tavern also exists on the southwest corner of Mayflower Road and Huron Street. The most desirable use for this site is one that expands and promotes the commerce along Western Avenue, while limiting any negative impact to the residential properties to the south and west. Due to the extensive existing and proposed screening in the form of landscaping and fencing, surrounding property values should not be adversely affected. It is responsible growth and development to allow the expansion of the Western Avenue Commercial Corridor in this natural progression. This is a combined public hearing procedure, which includes a rezoning and ten variances from the development standards. The Commission will forward the rezoning to the Common Council with or without a recommendation and either approve or deny the variances. The variances are as follows: 1) from the required Minimum Residential Bufferyard of 20' to 12' for parking on the south and east property lines as shown; 2) from the requirement that outdoor seating shall not be located between a building line and a residential bufferyard to allow for outdoor seating between the south building line and the south residential bufferyard; 3) From the maximum height of 36" in height for a fence located in a minimum front yard to 6' in height for a fence along Hollywood Boulevard; 4) From the required screening of trash containers to none; 5) From the requirement that trash containers not be located between the front façade of the primary building and the front lot line to allowing trash containers between the west façade of the primary building and the front (west) lot line; 6) From the required "bail out" lane for drive through facilities to none; 7) From the required landscaping of required perimeter yards and residential bufferyards to landscaping as shown on the site plan; 8) From the required foundation landscaping to landscaping as shown on the site plan; 9) From the required off-street parking area screening to none on the east, west, or south parking areas; and 10) From the required no off-street loading between the front lot line and the front façade to allowing loading spaces between front (west) lot line and the west building façade. State statutes and the South Bend Zoning Ordinance require that certain standards must be met before a variance can be approved. (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community. This is an appropriate extension of commercially zoned property consistent with the character of the area. (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The substantial amount of screening that will be provided will protect surrounding residential property values. (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The property fronts on

two streets, creating a practical difficulty for locating some of the essential items for the commercial development. The strict application will prevent the site from being developed into a functional grocery store. Based on information available prior to the public hearing, staff recommends the rezoning petition be sent to the Common Council with a favorable recommendation. Staff recommends approval of all ten variances. This location is an appropriate expansion of a commercial area. The Western Avenue Corridor is already equipped to handle the traffic which this site will draw. Surrounding residential properties should be minimally impacted by this use due to the extensive screening that will exist and the orientation of the traffic to Mayflower Road.

MIKE DANCH: I am with Danch, Harner and Associates, offices located at 1643 Commerce Drive, South Bend. As Matthew had mentioned, what we are asking to do here is to take property that is presently in the unincorporated portion of the county, which includes the existing restaurant on the corner of Western and Mayflower, and bring that into the City of South Bend. There is also a portion of the property on Hollywood Boulevard, just south of the shopping center that is on the southeast corner of Western and Hollywood, that is zoned B Business. The rest of the property all the way to our boundary line is residential in the county. We will bring that into the City of South Bend and bring it in as Community Business. As part of the petition that we filed, we filed an annexation petition and a rezoning petition for the entire site to have a consistent zoning of CB which is Community Business over everything. Just to let the Plan Commission staff know and also the members, we do have a petition with the County Council that is requesting to vacate the entire length of Huron Street, which bisects our site, running from Mayflower Road over to Hollywood Boulevard. That is not in the petition for you, but we have that up before the County Council. We had a meeting with the County Council. We ended up working with the owner of the WestWinds Tavern to address some concerns with access. We tabled our petition for that street vacation until the September meeting with Council. Hopefully, at that particular meeting we will receive approval to vacate the street. We are trying to do that because the street is in the County right now. To go through the annexation process, it takes a few months. We worked with the staff on this particular one to go ahead and ask for the street vacation under the County Council guidelines in the county, and then, if it gets vacated, we bring that all in the City of South Bend as one large parcel. As we mentioned, this is on the southwest corner. It contains approximately about 8.4 acres. This is the proposed location for the new Martin's Supermarket. The building itself would be about 40,000 square feet. The existing restaurant at the corner will remain for the present. Martin's does own all the property within the petition site. Right now, there is an agreement for that restaurant to remain and it will still fall under the commercial guidelines. What we have done here is to orient the site, so that the building is facing toward Mayflower Road. The parking area would be toward the east side, which would be off Mayflower. We will have access off Western Avenue, Mayflower Road and there would be one access point off Hollywood Boulevard. The access point that is on Hollywood Boulevard has been worked out with the staff and also the City and County Engineer Offices. That would not be for trucks. That is specifically to be only for vehicles for people coming from the west or south. We will actually have signage that would prohibit any truck traffic coming down Hollywood Boulevard either from Western Avenue or coming up from Sample Street off of that street. It is very important that we add that, so we will be doing all of the required signage. We have actually narrowed the driveway opening so that truck access would be very difficult to make at that location. Because we have control over all the basic deliveries that come to Martin's Supermarket, we can enforce that item so that it remains only for vehicles. We have worked with the staff on a lot of the landscaping issues. We are asking for the rezoning to Community Business District, but because we are coming into the City of South Bend I also need to request variances before this board for flexibility in landscaping. Due to the situation where we are going to the CB District we do have residential that abuts us on some of the areas, and we also have street frontages. Under the City guidelines for street frontages it requires a lot more restrictive landscaping building setbacks and where you can and can't locate certain things. Matthew had gone through some of those. The residential bufferyard that we had talked about was one of the first ones. It

was twenty foot down to twelve foot. That is kind of along the south boundary of this particular site. That parking lot that you see down there (pointing to the powerpoint) and where the retention area is, that would be employee parking. Because we are abutting up to residential in the County, we are actually required to have a twenty foot wide bufferyard. What we are doing is evergreen screening along that entire distance instead of having a twenty foot residential bufferyard. Where you see the arborvitae we are going down and asking for a twelve foot setback. That allows us that plenty of room to put in the evergreen trees. They have to be a minimum of six feet tall. We will also be doing some ornamental fencing along that portion. The interesting one was the outdoor seating area. At the southeast corner, where you see the grocery store, there is an area that is designated for outdoor seating. Because of the way the city ordinance is I have to ask for a variance for the outdoor seating between the south building wall and the south property line, which is approximately 190 feet of difference. Usually in the City of South Bend, I am assuming, they think you have a very small site so the outdoor seating may be right up against a residential area. We are 190 feet away, but the ordinance says I can't be between my building line and the property line, so I still have to ask for that variance. Again, the closest seating area would be is 190 feet. The height of the fence along Hollywood Boulevard, what we are going to be doing is two things; 1) We are going to be putting evergreen screening along the entire boundary where the building is and where the delivery areas are located and, 2) we are asking for approval to use a solid landscaping screening fence in a front yard. Even though it is our rear yard, it is a front yard because of Hollywood Boulevard. We are asking for approval to put up a solid screening fence. We want to make sure we have basically a double buffer. Not only the evergreen screening but also screening itself. That not only helps mitigate noises, but also the view from a couple of residential homes that are on the west side of Hollywood Boulevard looking into this site. They would not be able to see the building or any of our trash containers. That is one of the other variances that we had to have again, because the rear of the building, is toward Hollywood Boulevard. We will most likely have a trash compactor as part of the building but there may be some dumpsters back there. Because that is considered a front yard from our west building line toward Hollywood Boulevard, we still need to have a variance approved for that to allow for the trash containers at that location. On the bailout lane for the drive up window, on the south side of the building, basically at this Martin's Supermarket that drive-up window is for people picking up coffee only. It is a one menu item. If you are only ordering coffee, you don't need a bail-out lane or a lane that you have to come and wait. We have plenty of area for the stacking, but because it is a drive up window, again, the City ordinance requires a twelve foot bail out lane. They assume they would have a fast food restaurant where you pull around. So, in that particular case we worked with the staff. They also agreed with us that just because it's for coffee and it's one item that we didn't need a bail out lane. That was one of the variances that we were requesting. The last one is the foundation landscaping. The ordinance doesn't make a distinction between a grocery store, office development. The ordinance has in it that anytime commercial development for your primary front door, which in this case is toward Mayflower Road, you are required to have a six foot wide landscape bed and based on the width of the building you have to have so many shrubs or so many trees In this particular case we are doing a grocery store. We would ask to not have to put a six foot wide landscape bed in front of the grocery store. It doesn't make sense. We will be doing some landscaping along some portions of the building, but we would ask for that variance. On the other ones, for screening, we had worked with the staff. They asked us to add additional low landscape shrubs along where the restaurant site is. Right now, there is no real landscaping up there. So, what the staff had asked us to do was to provide landscaping for that parking area because that is the closest parking area to a public street. We are actually providing landscaping per the city ordinance. For the perimeter trees, the City ordinance requires trees every 40 feet along the entire perimeter. We worked with the staff to come up with additional trees along Mayflower Road. We had some conversations with the owner for the shopping center that is at the southeast corner of Western and Hollywood Boulevard at our northwest corner of our site. They asked us to specifically not to have trees there because they also have signage. We worked with the staff in that particular case. What the staff asked us to do was add more trees on the interior portion of our site to make up for some of

the ones that are along that perimeter. That is what this particular site plan reflects. From a drainage standpoint, we are going to end up meeting the City codes. We do show a retention basin down at the southwest corner of the site. For the portion of the existing trees that are down there at our southwest corner, we are going to try to maintain those so we have that natural buffer between Hollywood Boulevard and our retention basin. We don't want to rip out all the trees. We prefer to keep as many as possible. The staff had asked us to do that as well. We are working with them on our final site plan for that portion of it. As far as utilities, this will be hooked up to water and sewer. There is actually a sewer line that is running down Huron Street, so we will connect to that. Even though it is being vacated, the way this particular site plan is developed is that we are working around the location of those existing infrastructure improvements. We will bring in a water line and actually be looping it. That was one of the requests from the City of South Bend. There is a water line where the restaurant is and we will be bringing that down the west side of Mayflower Road and actually tying it to the subdivision to the east. That is to keep the pressure off the line. The one written commitment that the staff had requested us to do, and will be submitted as part of this petition, is that they did not want any off premise signs. We agreed to that. No one can come in here and actually have a sign on this property that advertises for somewhere else. The only signage they are allowed to have is signage per the CB Community Business District and it is strictly for the uses that are on the site. That would be incorporated into the documents assuming approval for the rezoning. Lighting will meet all the standards for the City of South Bend. You have to have full, shielded lights so you don't have any light spillage onto any adjacent areas.

OLIVER DAVIS: Has there been any consideration regarding the extension of the TRANSPO route since this is moving into the City of South Bend?

MIKE DANCH: At the Project Advisory Meeting (PAT) we had, there was interest in that, and we will actually work with TRANSPO so that we can get a bus to the front of the building. They had thought possibly of doing a bus stop out by Mayflower Road and said why don't we just make the stop at the building which would make a lot more sense. You can drop patrons off right at the front door of the grocery store, or they can be picked up where the bus route goes to. Which makes more sense. That way you are not dropping someone off at Mayflower Road and then having to cross the parking lot to get to the building.

OLIVER DAVIS: So, you will talk with TRANSPO?

MIKE DANCH: Yes. I think this gives them an area of turn around also and makes it easier to get back out.

GERRY PHIPPS: The north entrance, the one off of Western, has that been approved as a full use entrance?

MIKE DANCH: That is a right in, right out. That is the existing drive that is there right now and it will remain right in, right out. That is the berm between basically the westbound and eastbound lanes. Because we are so close to that signalized intersection we would not want a full entrance there.

GERRY PHIPPS: In the vacation of Huron, I am assuming that the tavern owner will get half the right-of-way that he can use for their parking and you will give them access easement over your drive way to get in and out of?

MIKE DANCH: If you saw the picture for the tavern the staff had shown, the parking that they have on the north side of their tavern actually encroaches into the public right-of-way. What we are going to be doing as part of the vacation process is giving them an additional ten feet. So they now get a half

right-of-way, and as part of the ordinance that I wrote up for County Council it will give them an additional ten feet. That ten feet would actually give them the entire pavement width that you saw in that picture. That would allow them to use not only the parking but will also give them an aisle way to be able to use that parking. Hopefully it gets vacated then that becomes their property. The parking will now be on their property instead of in the right-of-way.

GERRY PHIPPS: That easement goes over the driveway?

MIKE DANCH: We are working that out now so we would have access. The way we try to do everything on this site plan is to give them access to their property. They would have access off Mayflower Road through our site to allow truck deliveries or patrons. The patrons will also be able to come off of Hollywood Boulevard into the site and we had talked with the owner. That was a concern that they had. They wanted to make sure that patrons that use their facility would be able to get out to Mayflower or Hollywood Boulevard. My understanding, in talking with the owner, is that the patrons don't like to get out onto Mayflower because of the higher traffic. They would prefer to go to the west and go out onto Hollywood Boulevard. That's why we created this what we have with the driveways.

OLIVER DAVIS: Now, Top Notch will remain open?

MIKE DANCH: Yes.

OLIVER DAVIS: They are currently in the County?

MIKE DANCH: Yes.

OLIVER DAVIS: So would Top Notch be in the City?

MIKE DANCH: Yes it would.

OLIVER DAVIS: Would that affect any changes they have to make?

MIKE DANCH: No. We worked with the staff on this. Restaurants are allowed under the Community Business District. No changes. Basically, this would also bring them in.

STEVE VOJTKO: The road access from Mayflower, does that have a turn lane in it?

MIKE DANCH: Yes, it would. When we worked with the City Engineering Department what we wanted to do with our main drive was to have a left turn lane, a right coming in and a right going out. We put it in a location that it is far enough back from the main signalized intersections so that one you can see the traffic. You have visibility that is there. There is a lot of traffic on Mayflower Road. We are working with the City on that particular one. They were ok with where we had that location. They had asked us to make sure we had a left turn so that any cars coming out of our site could turn left onto Mayflower.

STEVE VOJTKO: Will Hollywood be brought into the City or is that going to stay in the County?

MIKE DANCH: The way it works right now, Hollywood Boulevard will remain in the County. It was just paved I think maybe a year or year and a half ago, if I am not mistaken. We have been working with the staff on the annexation portion of this, so Hollywood Boulevard will remain in the County. Western Avenue (that portion of it) will remain in the County. Mayflower Road would change over. Right now the municipal line runs down the center line of Mayflower. That would be totally be brought into the City of South Bend.

STEVE VOJTKO: Is there enough room for snow removal on the east side of Hollywood?

MIKE DANCH: Yes.

STEVE VOJTKO: From the picture it looks like it is up close.

MIKE DANCH: It looks like that. What happens is the right-of-way for Hollywood Boulevard is sixty feet wide, but the actual pavement might be around twenty two to twenty four feet. There is plenty of room. Our evergreen trees are actually out of that right of way, so there's another probably sixteen feet, plus or minus, for snow plowing so they can move snow off to that edge.

ROBERT HAWLEY: Assuming everything moves along smoothly, what would be a projected construction date and opening of the operation?

MIKE DANCH: If everything goes well and we get all of our approvals in place, what they would like to be able to do is begin construction probably next spring and open in 2017.

DAN BREWER: Are there any safety concerns associated with the retention pond on the south side there? It will bring a lot more people into the area. Is it full or deep?

MIKE DANCH: It is not that deep. We haven't done all the civil engineering work on it yet. We are putting security fencing around the site, though, to make sure that is not going to be a problem. The thing that we deal with is that this is the actual requirement for drainage. It is less than the county. We will probably end up using a couple different systems here. It will most likely be piping and maybe some storage under the parking lot. Then toward the south side, that water would go into that retention area. We have done borings out here and there is sand, so it is pretty good. It will infiltrate into that upper layer, which is where that sand is located.

STEVE VOJTKO: Is this a 24/7 grocery store?

MIKE DANCH: No. This particular, one most likely, will be maybe fifteen to seventeen hours. I think the closing around 12:00 a.m. and opening around 7:00 a.m. This is not anticipated to be a 24-hour operation.

#### IN FAVOR

There was no one present to speak in favor of this petition.

#### REMONSTRANCE

MANDY BUJEKER: I reside at 56717 Mayflower Road. I have lived there my whole life except four years. Many of my neighbors I know, they have lived there many, many years. We have a very nice neighborhood. There is a lot of traffic on Mayflower Road. That is one of my really big concerns, because they don't mention that there is a school on the corner which does not have bus access. It is a Parochial school. People pick their children up and drop them off. There is an access off Western. People come up Hollywood Boulevard and go to that school entrance/exit. Also, there is an entrance/exit off Mayflower. I travel this every morning and every evening to go to work. There is a lot of traffic, I really don't see how this is going to handle the traffic. From what I have studied and checked out

through the Community and Environmental Defense Services about traffic impact. It says at least 700 trips per day per thousand square feet of building. So that is going to increase. Right now, I am going to pass this around, but if you will look to see, we have Veldman's Gas Station which has three entrance/exits on Mayflower right there, almost across from where this is going to be. Also you have the lawn care. Down a little ways you have Scenic Drive. People coming out of that every morning. We have all of our driveways here. We are very close to this. A lot of people try to take a little route and come down Scenic and through Huron just to avoid it. Myself, sometimes, I come around here and go out this way to take the by-pass. The by-pass is too much of a death trap right now with construction. Washington High School is right down the street. There is so much traffic, and then in the winter I find it almost impossible to get out. If the store is going to be running from 7:00 a.m., most people are going to school and there is traffic between probably 7:20 – 8:00 a.m. I know traffic accidents in our area are up 14%. It really concerns me, especially the school children. I am going to pass this around (Exhibit) and you can see it for what it is.

LARRY MAGLIOZZI: Mr. King, if I could maybe just give everyone a heads up. Since that is an exhibit, we will have to accept that for our records.

MANDY BUJEKER: That is fine.

LARRY MAGLIOZZI: You can borrow it for the City Council meeting, but we will have to keep that here tonight.

MANDY BUJEKER: That's fine. I am also concerned about the undesirables that are going to be walking through our neighborhood. The elevation of the water levels is very close to our homes. That is going to be all cement. I know they have a retention pond, but I believe someone else is going to be covering that. I think one thing that really impacted us neighbors was how we tried to find out. I called Area Plan month after month after month to find out what was happening. I figured this place, -the County Development- interesting name, but anyway-incorporated, went ahead and bought all the houses. They probably spent just under a million dollars, but they knew for sure they were going to be able to do this somehow. So in America we are getting so many things crammed down us that it just put a really bad taste in our mouths. We could not find out what it was until it was on the news in the first week of July. Then finally the neighbors within 300 feet were notified and only gave them maybe six or seven business days. We also want to know what good is this going to do to our neighborhood? Is there going to be an expansion to this? We would like to know what is going on. We hear rumors that they are going to buy us all out. As far as I know, these properties that are in the Martin's area now are the only ones sold. My questions to the gentlemen back here is what is it going to do for our neighborhood? It's our neighborhood. We have lived there for a long time. It is our biggest asset. All of us have paid taxes. We have all voted in this community, and I just feel that this has all been done the wrong way. But, the main thing is safety. I know all of you see how terrible traffic has gotten in a lot of places, but I don't know how we are really going to be able to get out of our driveways. The noise factor, open till midnight in our neighborhood.

JEFF BOOCHER: I reside at 56577 Hollywood Boulevard. I will be right across from the proposed grocery store. Listening to the petitioner, I can understand his excitement of this project because those that are in favor of this project are those that stand to profit from it. We, the homeowners, stand to lose from it. Most of us have lived there for over thirty years. I have lived in my home for thirty nine years. Mine was an old farm house and I developed it and added on to it, increased the property values and raised five children there. My grandchildren come there now and play. I submit that this project will be a hazard to the public health and safety of our neighborhood and our general welfare. I have read the staff report. While the staff report repeatedly points out about a large amount of screening in the same breath they talk about reducing the right-of-way. No matter how much screening that gets done around this project it still comes down to one thing, we are having a grocery store put in our neighborhood.

Fifteen years ago this project was proposed. The land was semi purchased from the homeowners that were there, and the County Council turned it down for some of the same reasons that I am going to bring up here in just a few minutes. The staff report talks about vacant homes. These homes were not vacant. These homes had families in them. They were purchased with nothing but the idea of putting this project in. It was kind of kept secret. No one really knew what was going on. I think in our hearts we knew what was actually happening. I want to talk about the large amount of traffic that is going to be generated on Hollywood Boulevard. Hollywood Boulevard is a County Road. Yes, it was just repaved. I work for INDOT. I am an engineer. I know how Hollywood Boulevard was repaved. It is repaved as a County Road a residential road, it is not made to take the traffic that this facility is going to put on it. Our children walk along this road. They ride their bikes along this road. There is no sidewalks, and it's just not going to be a good situation. It just is not. The entrance in the rear of the grocery store is going to generate a lot of traffic onto Hollywood Boulevard. A lot of that traffic is going to be generated there because people are not going to be able to get out onto Mayflower. Mayflower is a very busy road. The developer says that it's not going to be used for truck traffic, once again, I, work for INDOT and I see a lot of signs put up that says no truck traffic, and we are standing in the face of an eighteen wheeler in the middle of our construction site. It isn't going to happen. They can put up all the signs they want and that driveway is going to be as small as they want. Trucks are still going to try to use that road. That is all there is to it. That is the simple truth to the whole thing. I can see Hollywood Boulevard becoming a primary access because of the cross over on Western right across from Hollywood. Traffic that will be coming from the east will cross Mayflower because it will be easier to turn across Western and come in to Hollywood Boulevard. The main access site on Mayflower Road has no turn lanes. It is a two lane road. It becomes very congested during peak times. I have seen traffic backed up past Huron Street at times trying to access Western and cross there. I think this is going to create a great hazard. While the proposed site will be served by city sewer and water, I will point out that all the homes around there are well fed. I have a great deal of concern for storm water run-off in this area. I have spoke with IDEM about it and I find that my concerns are justified. There are two retention ponds shown on the plan. From best I could figure out, they are going to be approximately twenty-four to twenty-eight thousand square foot of retention area. All I can say is that all it is going to take is one semi and one car dumping its antifreeze overheating into that storm water system and we are going to have groundwater contamination, and all of us people in our little neighborhood are going to be drinking antifreeze. It's not right. That's all there is to it. The above ground site will also foster the growth of mosquitos and insects. I don't know if any consideration has been given to underground retention areas. I suppose maybe I should not be telling a developer how to do something, but that might be something they want to look at and some kind of pollution system that will assure us that we do not have contaminated water. There was some talk earlier about jobs being created. There are no new jobs being created. These are just jobs that are being recreated. They are being moved from one site to another. In the staff report I also read that it said it will have minimal effect on your property values. I discussed this with a realtor and the realtor said I can look at a \$10,000 to \$15,000 drop in my property value. I do realize that where my home is that it is never going to be worth what I put into it, but I don't see why I should suffer even a bigger loss so that someone else could profit from it. There is a large amount of commercial property available along Western Avenue within the City Limits. Anyone that drives down Western Avenue sees it. It has been called the Gateway to our City. We are trying to improve Western Avenue. We have a major supermarket that says lets go out into the County in the middle of a residential neighborhood and build a new supermarket. Maybe they should look at the City. Maybe they should invest in South Bend instead of trying to ruin somebody's neighborhood.

KARL KING: Sir, excuse me for just a second. I am sorry to interrupt you. Your remarks are very interesting. We do have a five minute limit.

JEFF BOOCHER: I have one more point to make.

KARL KING: I am just asking you to try to come to a conclusion.

JEFF BOOCHER: Can I make my last point?

KARL KING: Certainly.

JEFF BOOCHER: Thank you. I guess in closing I ask that the Area Plan Commission to give this an unfavorable recommendation to the County Council and to reject all ten of the variances.

KAREN KAZMIERZAK: I am speaking on behalf of my mother, Angela Kowalski, who resides at 56680 Hollywood. Her property borders the area in question to the south. My mother is 92 years old and has lived on Hollywood Boulevard in the house that my father built since 1955. She is in good health and has no intention of moving and would like the neighborhood to retain it's peaceful atmosphere. When Martin's first attempted to move into our neighborhood over ten years ago, my mother along with my father and several of the neighbors had remonstrated. Their concerns focused on traffic, noise, pollution and decreased property values. As far as the issue of property values is concerned, my mother is in the process of getting an appraisal and will take Martin's to task if she should decide to sell after the store opens and her property value decreases. We have a few other issues as well to contend with. The first point concerns noise. During construction the neighbors will have to put up with the sounds of heavy equipment. Will work be limited to reasonable hours, like 8-5? Or will building begin early and end late? Will there be construction on the weekends? Will heavy equipment be using Hollywood Boulevard? Once construction is completed and the store opens, would semi trucks disturb the neighborhood with night time or early morning deliveries? A second point concerns the landscaping plans. The site plan has plantings of arborvitae and evergreens for screening purposes along the west and south borders of the property in question. We expect the trees to be watered and maintained regularly and the litter and weeds to be removed. Along the new Lincolnway, south of the airport, the plantings have been neglected and some of the trees have died. We don't want to see this on Hollywood Boulevard. Variance #4 calls for no screening of the trash containers. I am assuming that the plantings will hide the view of the dumpsters from the neighbors. It is important to have the trash hidden from public view. The final concern involves light pollution and ground water contamination. Parking lot lights are normally very bright and interfere with sleep. Certainly the stars will be dimmer with competing brightness from the parking lot. Perhaps the lights can be turned off or turned down after business hours. The site plan calls for a run off pond to be located on the southwest corner. This would take water from the parking lot after rain and snow. The residents of the area have their own wells. Automobile fluids and snow melting chemicals will wash into the pond. This could eventually contaminate ground water. Will the retaining pond be lined? Will there be stagnant water that could harbor mosquitos? What measures are proposed to limit stagnation and contamination? When Martin's last tried to move into the neighborhood, the EPA had gotten involved and put a stop to the project. What will be done should neighboring wells be contaminated? Speaking on behalf of my mother, Angela Kowalski, I would like to conclude by saying that she is very distraught. The changes in the neighborhood she will face and the building of the supermarket next door has disturbed her. She is concerned that the tree screens will be properly maintained, that noise and light pollution be kept to a minimum and that groundwater contamination in particular be avoided. I would like to conclude in saying I did not anticipate that the store would be open till midnight, but I think it is not necessary for a store to be open till midnight in my mother's neighborhood.

LOUANN GONDOCS: I represent my mother-in-law, Veronica Gondocs, who resides at 56547 Hollywood Boulevard. She is the first home. She has Western Avenue frontage as well. The home was built many, many years ago. It has been in the Gondocs family for years. It sets very close to Hollywood Boulevard. She is going to be greatly impacted. When Mr. Booker talked about where

people can turn on Western Avenue and come down Hollywood Boulevard, he is exactly right, that is exactly what is going to happen. It happens now when people are trying to pick up their kids from Holy Family, which is a really good point. The other point is the groundwater. I am extremely concerned about the groundwater. I just don't understand. I wish we had a picture to show you of Hollywood Boulevard and you can see on any given day the basketball hoops. There are no sidewalks. Again, another really valid point. You are going to have a situation where homeowners have basketball hoops where their kids can play. It's a neighborhood. I own a home next door to the Walgreen's on Ironwood and Mishawaka Avenue. I know and everyone else knows that despite Mike's best efforts which I am sure are great, you can't stop a truck that wants to make a turn. You know what they do on the alley with Potawatomi Park, they just park there and make their deliveries and then block the road and come back out. I don't think any access to Hollywood Boulevard is permissible. I just think the least you can do is protect the neighborhood and somehow stop it so there is no access from Hollywood Boulevard.

KYLE ZELLER: I reside at 56685 Mayflower Road. I drive a truck. They are absolutely right. You make any kind of opening to Hollywood and it's going to be used. It's a good road. It's a smooth road. It's nice black top. That means you go faster. Plain and simple. No access, shouldn't be. You are going to have to put more stop lights and turn signals so westbound traffic on Western should turn left with a traffic light into Martin's. Might not be a bad idea. I like Martin's. I am not totally opposed.

THOMAS KOWALSKI: I also represent my mom on 56680 Hollywood Boulevard. Her property is directly south of their retention pond. Couple of the items that have my concern is that our well is probably, from what I see, is about 150 feet from that retention pond. That is one of the main concerns. Additional traffic is another one. I have been working in the back garage restoring Studebakers since I got out of the service in 1971. That is kind of my hobby right now. I am concerned with the additional outsiders coming into our neighborhood and the amount of crime it will bring into the neighborhood. It is proportional to the people in and out of the stores as such. They see more crime opportunity to steal and home invasions. With that coming into a residential area, I see an increase of crime in the area. Me, in particular, getting my tools ripped off and my equipment for restoring cars. The mosquitoes is another issue because a retention pond will bring them. It's like leaving tires out. When they fill up with water the mosquito's come. I don't think it's a good idea. This is not a lot of area. I think they should look at a different place to put their store.

#### REBUTTAL

MICHAEL DANCH: As we had mentioned we have been working with the City Engineer and the County Engineer on the development of this particular site. We think we have worked out all of the issues, at least from a traffic standpoint, that were concerns of the engineers from both the City of South Bend and St. Joseph County. We work with both engineering departments. We have worked with the staff on this. This is located on Mayflower Road and Western Avenue. Those are traffic collectors. Based on the way we have done our site plan, and based on the size of the building and the traffic that is going to be coming in and out of the building, we work with them on the design based on their inputs to determine where we were going to stick our driveway openings. We placed them at locations that were away from the signalized, intersection which allows for easy access into and out of the site. The main driveway onto Mayflower Road is most likely going to end up having a deceleration lane, which will allow traffic to pull off the main lanes coming into the site. That most likely will be a requirement by the City of South Bend as part of the final site plan approval. That will take care of some of the issues that we were talking about with the traffic. There is traffic right now that the residents had mentioned going down Hollywood Boulevard. We have designed this site so that we are not adding to that traffic. It sounds to me like that traffic that is coming through there are people cutting through to get to the church parking lot to pick up their kids. The way we have designed the particular site, if I were to be coming to

this grocery store I would be definitely coming down Mayflower Road and coming into the site off Mayflower Road where our main entrance would be. Any traffic coming west on Western Avenue would come to that left turn because you would get the light and you would come south on Mayflower Road and come into this particular site. I do not see truck traffic coming out of this site. Because of the way the site is laid out for trucks coming in and around up to the building they have to come in and off of Mayflower Road. It's the way that the drives have been laid out, it's the easiest way for them to make their turning radius'. There would be no way for a truck to make the turning radius coming down Hollywood Boulevard and into the site to get to the back of the building.

The issue with the drainage as I had mentioned, which is City standards and less than County standards, this particular area has sand layers for the top portions of the site. There is a clay layer farther down, which is basically a layer between us and the aquifer layer where the residents have talked about where their wells are located. The way these are designed by the City standards is that any water that will come into the retention areas would infiltrate into that sand. They would never get down to where the aquifer layer is. We have taken that into account as well. There was a question of lighting on the site. They were worried about light pollution or lighting that goes over the line. The City requirement for lighting is actually more restrictive than the county requirement for outdoor lighting. Under the city guidelines you have to have zero foot candles at the property line, which means no spillage. You have to have full cut off lighting structures and, in order to do that, what the City requires is actually lower light standards than what you are allowed to have in the county. We are required to meet that standard so that there is no light spillage that would go onto either residential or commercial areas that would be adjacent to this particular site. As far as landscaping, because we have a site plan requirement, one of the issues that they had brought up was that any plant material that dies wouldn't be replaced. This is not the case with Martin's. They maintain their property. They will own this property. They are not leasing it. They will maintain everything. The City also has the ability to come in and require them to replace any landscaping, per whatever is shown on the site plan, as a backup feature. There is an insurance policy with the City of South Bend for doing that. It would be maintained from that standpoint.

OLIVER DAVIS: You didn't address some of the issues. The issue of property values. I heard \$10-\$15,000 decrease in property values. I also heard that there is a possibility that something may spill into water and contaminate it. Issues with sidewalks were a concern. What are your thoughts on having no access to Hollywood? Is there a way you can reroute that so there is no access at all? Any additional safety concerns that you could see being put into place? How would you address those issues? Would there be any potential time, aside of the public meeting here, to have a meeting with the neighborhood? You can air things out. I didn't hear a complete rejection of the project. I just hear there are a lot of issues. Is there any kind of time that you could meet ahead of the council meeting at a site over there that will allow us to come together and have some peace?

BOB BARTTLES: I am the President and CEO of Martin's with offices located at 760 W. Cotter. I really do understand the uncertainty that comes with developments like this. We have done several stores that abut neighborhoods. The one that sounds most like this is Cobblestone Crossing in Elkhart. The property value thing is a very big concern. That housing development was being done while we were creating our store. We addressed the concerns of lighting, sound, truck scheduling, and truck access. Our job as customer service is to do those things in the correct way, and we do listen to the folks that come to us. Since that happened, that neighborhood has been expanded and the rest of the homes in that neighborhood were built out and the plan was completed. If there was a dilatory aspect of us coming into the neighborhood, I am not a real estate guy, I don't know what those values are, but they did complete the development that they were interested in. We are good neighbors. We do the right things for the right reasons. Yes, we would be happy to meet with folks and address concerns and work through issues.

OLIVER DAVIS: You just shared the Elkhart one and that is one of the reasons why I would like you to meet with the neighbors. Would it be possible to give them a tour of that facility and show them what it looked like?

BOB BARTTTLES: Sure.

OLIVER DAVIS: What I have heard is that a lot of people saw things but they weren't given the communication, so there are a lot of unanswered questions. If those can be included in some of the changes, then it could possibly be a better win-win situation.

BOB BARTTTLES: We are happy to have those discussions. I am not quite exactly sure how to facilitate it.

KARL KING: This is great, but it actually really isn't appropriate for a public hearing. Perhaps you can get together after the meeting.

BOB BARTTTLES: I just wanted to address the remonstrance.

OLIVER DAVIS: I understand.

KARL KING: The purpose of the rebuttal is to respond to questions and concerns that were raised during the public hearing. As much as I think this is productive, we need to stick with that.

MICHAEL DANCH: To answer a couple of the other things. As far as the sidewalks are concerned, we are working with the City. We will be putting a sidewalk along Mayflower Road. That was asked by the City so we will be doing that. Sidewalks on Hollywood Boulevard, I don't know if those would work out. My personal opinion is that based on what they are telling me for and traffic for people that are going up and down Hollywood Boulevard, that may not be the best to have pedestrians on that side. We would do it on the side for Mayflower Road as part of the City requirement. What we try to do here was the two things that we talked about was the solid fencing along the entire portion of Hollywood Boulevard with landscaping toward the resident's side, which does mitigate the noise factor that you were talking about and also the visual portion. We had mentioned that as part of our presentation, so that is what we would be doing along that portion of the project.

OLIVER DAVIS: Can you talk about the water?

MICHAEL DANCH: That is what I just talked about with the clay layer that is out there. That is a natural feature of that location, so anytime you have any kind of contaminates or anything that comes off the parking lot that you have anywhere in the City of South Bend, we are keeping that to a level that is not as deep. Basically our storage areas are above that clay layer, so if there was any kind of contamination it would be in the sand layers toward the top. Obviously if we knew that there was a spill or something we would have that cleaned up.

JOHN MCNAMARA: I am a little confused because this is in the County?

JOHN DELEE: It is in the City.

MICHAEL DANCH: It is going into the city.

LARRY MAGLIOZZI: It is currently in the County but there is an annexation that is in conjunction with this particular petition. This is a combined ordinance that annexes the property and then zones it into

the City of South Bend.

JOHN MCNAMARA: Right now the annexation is in the process?

LARRY MAGLIOZZI: Correct. It is the same ordinance. If the annexation fails essentially the zoning does not happen either. They would have to refile. They are joined together in one ordinance.

KARL KING: The jurisdiction for which we are having this hearing is the City of South Bend?

MICHAEL DANCH: Everything assumes that annexation would go through and then the zoning classification would be for the City of South Bend.

STEVE VOJTKO: Are there going to be any monitoring wells out there?

MICHAEL DANCH: Usually on a development there is not a requirement for that. Monitoring wells would usually go in if you had a site that is a Brownfield site where there was already previous problems with contamination. In this area again that is something that the City takes a look at because they have what they call a Wellhead Protection Program. They are very cognizant of any type of drainage systems are used for commercial development, so they have to be able to monitor where those are at.

STEVE VOJTKO: So you have one currently in the area then?

MICHAEL DANCH: They take a look at it. What happens is if there was any contamination out there we are not aware of right now, that could come into play as far as how they tell us to handle things on this site. The Wellhead Protection basically says that if there is a municipal well somewhere that would be close, they could look at the travel time for where ever that well is and that determines what type of drainage system we are allowed to use.

STEVE VOJTKO: So with the public wells, how does that come to play?

MICHAEL DANCH: You are talking two different things. Private wells and public wells. Wellhead Protection Program is for municipal wells. The private wells are basically, you maintain the depth of those and we have an intercepting clay layer that would keep the contamination from going there.

STEVE VOJTKO: It's just that this area is all private wells and you are putting them into a commercial development. If something were to happen how would you...

MICHAEL DANCH: If you look at this area, I am not aware of anything that has happened. You would basically have the gas stations that are on two of those corners and I am not aware of anything. Nothing has been brought up from the staff that has said there has been any spillage of any type that is out in this neighborhood so far. I would be more concerned with the gasoline stations that are out there, then what we are doing.

STEVE VOJTKO: Regarding the sidewalks, since that is the County, engineering hasn't really looked at that then?

MICHAEL DANCH: The County Engineer did look at that. As part of that it is more a concern from the City side from a pedestrian standpoint that they wanted us to put a sidewalk along Mayflower Road. From the County side because Hollywood Boulevard would stay in the county, there was not a consideration for having...

JOHN MCNAMARA: If you are going to annex, you have to annex Hollywood Boulevard.

MICHAEL DANCH: No.

JOHN MCNAMARA: Yes.

JOHN DELEE: They are not.

JOHN MCNAMARA: You have to.

OLIVER DAVIS: What is your rationale?

JOHN MCNAMARA: That is the way the law reads.

LARRY MAGLIOZZI: The law has changed as of this year. I believe as of July 1. There is a twist in the law, as usual coming from some kind of fight between two municipalities around Indianapolis. In a nut shell, what the law now says is that you still have to annex both sides, but when you do that, you have to get signed legal consent from the owners that remain in the county. The annexation line actually does not touch Hollywood Boulevard. Therefore they do not have to annex both sides of Hollywood.

JOHN MCNAMARA: That is as of July 1, 2015?

LARRY MAGLIOZZI: Yes. You are correct, since 1995 that has always been the case and it still is.

STEVE VOJTKO: The houses that are out there now, have then been abandoned because they were bought a number of years ago. What has changed from fifteen years ago when they were denied to now?

LARRY MAGLIOZZI: Actually, we don't have a record of a zoning here. I am not sure if that is a glitch in our system, but we didn't see any history.

MICHAEL DANCH: The houses are owned by Martin's Supermarket or County Development. I have never heard of this site being rezoned or a request for it to be rezoned.

OLIVER DAVIS: So the issue of it being denied ten or fifteen years ago was news to you too.

MICHAEL DANCH: It is news to me. Even when I worked at the Plan Commission I don't recall this site being requested to be rezoned.

EDWARD W. HARDING: I am the manager of County Development, LLC. I practice law at 131 S. Taylor Street. Having been present that night, I presented on behalf of Martin's a petition to rezone that area in the County. Martin's withdrew that petition. It initially passed and Martin's withdrew its petition. The council reversed its decision and left it as it was. We elected at that time not to proceed with the project. It had passed initially and was withdrawn by Martin's at our request.

MITCH HEPPEHNHEIMER: Do you know when that was?

EDWARD. W. HARDING: It had to be 1996 or somewhere in there.

MITCH HEPPEHNHEIMER: Thank you.

JOHN DELEE: I am a little disappointed that Martin's chose a site that requires all these variances. However, I do know that everywhere Martin's does go the neighborhood has benefited and certainly the West side of South Bend is going to benefit very much from this development. Even though I am a little disturbed by all the variances that are required I think I would support this.

OLIVER DAVIS: I want to make sure we can meet with our neighbors before the council meeting. It would be nice to clear this up before the council.

After due consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Oliver Davis and carried, the ten variances as follows: 1) from the required minimum residential bufferyard of 20' to 12' for parking on the south and east property lines as shown; 2) from the requirement that outdoor seating shall not be located between a building line and a residential bufferyard to allow for outdoor seating between the south building line and the south residential bufferyard; 3) from the maximum height of 36" in height for a fence located in a minimum front yard to 6' in height for a fence along Hollywood Boulevard; 4) from the required screening of trash containers to none; 5) from the requirement that trash containers not be located between the front façade of the primary building and the front lot line to allowing trash containers between the west façade of the primary building and the front (west) lot line; 6) From the required "bail out" lane for drive through facilities to none; 7) from the required landscaping of required perimeter yards and residential bufferyards to landscaping as shown on the site plan; 8) from the required foundation landscaping to landscaping as shown on the site plan; 9) from the required off-street parking area screening to none on the east, west, or south parking areas; and 10) from required no off-street loading between the front lot line and the front façade to allowing loading spaces between front (west) lot line and the west building façade, were approved subject to the rezoning being approved by the Common Council

Upon a motion by John DeLee, being seconded by Oliver Davis and carried, the proposed ordinance of County Development, LLC to zone from R: Single Family District, B: Business District and C: Commercial District, (County) to CB Community Business District (City), property located at 23530 State Road 2; 56575, 56589, 56605 Mayflower Road; 23562, 23580 Huron Street; 56546, 56576, 56586 and 56660 Hollywood Boulevard, City of South Bend is sent to the Common Council with a FAVORABLE recommendation, subject to Written Commitments for no off-premise signage on site. This location is an appropriate expansion of a commercial area. The Western Avenue Corridor is already equipped to handle the traffic which this site will draw. Surrounding residential properties should be minimally impacted by this use due to the extensive screening that will exist and the orientation of the traffic to Mayflower Road.

- D. A combined public hearing on a proposed ordinance of Flowers by Stephen & Assoc LLC to zone from CB Community Business District to MU Mixed Use District and seeking the following four variances: 1) From the required landscaping of required perimeter yards to none; 2) From the required off-street parking area screening to none; 3) From the required minimum front facade height of 22' to 21'; and 4) From the requirement that trash containers not be located between the front facade of the primary building and the front lot line to allowing trash container between the west facade and the front (west) lot line, property located at 4325 S. Michigan Street, City of South Bend - APC# 2748-15.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from CB Community Business District to MU Mixed Use District for a flower shop with an upper level dwelling unit, and seeking four

variances from the development standards. On site is an existing flower shop, zoned CB Community Business District. To the north is a music store, a retail store, and an accessory structure, zoned CB Community Business District. To the east across Michigan Street is a drive-through restaurant and an auto parts store, zoned CB Community Business District. To the south is the future site of Belle Tire, zoned CB Community Business District. To the west across Main Street is a vacant lot zoned SF2 Single Family & Two Family District. The MU Mixed Use District is established to promote the development a dense urban village environment. The regulations are intended to encourage all the elements of a traditional urban village, including: storefront retail; professional offices; and, dwelling units located either in townhouse developments or in the upper stories of mixed-use buildings. The development standards in this district are designed to: encourage a pedestrian oriented design throughout the district; and, maintain an appropriate pedestrian scale, massing and relationship between buildings and structures within the district. The site is made up of two lots joined by a parking lot, totaling 0.34 acres. The site has frontage on both Michigan Street and Main Street. Parking is provided for 10 vehicles between the rear of the business and Main Street, and two parking spaces are provided along Michigan Street. The existing building is part of an integrated center, with two other storefronts on the adjacent lot to the north. The building is approximately 21' in height, and houses retail space on the first floor, with a residential dwelling unit above. Michigan Street is a commercial corridor into the City of South Bend with very limited need for zone map amendments since the 1980's. Main Street has two lanes and Michigan Street has four lanes. This site is served by municipal sewer and water. The County Surveyor and the Department of Community Investment offer a favorable recommendation. The City Engineer notes that drainage issues may need to be resolved prior to issuance of a building permit, and that semi-trucks making deliveries may have difficulty maneuvering through the site. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006). Policy H 1.3: Encourage the development of mixed-use buildings. The Future Land Use Map identifies this area for commercial development. The South Bend South Side Development Area Plan (2002) addresses the need to create a pedestrian-friendly commercial environment in this area. Main Street and Michigan Street form an arterial commercial corridor and provide access to the city from US 31. The most desirable use is one that is compatible with the commercial and mixed use character of the area. Due to the existing commercial character of the area, surrounding property values should not be adversely affected. It is responsible growth and development to allow this property to be zoned to a less intensive commercial district. This is a combined public hearing procedure, which includes a rezoning and four variances from the development standards. The Commission will forward the rezoning to the Common Council with or without a recommendation and either approve or deny the variances. The variances are as follows: 1) From the required landscaping of required perimeter yards to none; 2) From the required off-street parking area screening to none; 3) From the minimum required 22' front facade height to 21'; and 4) From the requirement that trash containers not be located between the front facade of the primary building and the front lot line to allowing trash container between the west facade and the front (west) lot line. State statutes and the South Bend Zoning Ordinance require that certain standards must be met before a variance can be approved. (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The site is an existing commercial development. The trash receptacle will only be visible from the west side of Main Street, which is predominantly vacant. The difference of one foot of façade height will not be easily distinguished, or adversely affect the general welfare of the community. (2) The use and value of the area adjacent to the property included in the variances will not be affected in a substantially adverse manner. The requested variances will allow the site to maintain its current layout, which is similar to adjacent properties. The trash enclosure will serve as a screen for the dumpster, which is already existing on the lot. (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Since the site technically has frontage on both Main and Michigan Streets, the strict application of the ordinance would subject it to more requirements than other, similar, commercial sites. Adding an additional one foot to the façade of the building would pose a significant cost, with minimal

benefit. Since this site has two fronts, a trash receptacle could not be placed outside of a front yard without impairing traffic flow through the site. Based on information available prior to the public hearing, staff recommends the rezoning petition be sent to the Common Council with a favorable recommendation. Staff recommends approval of all four variances. Allowing this site to be zoned to the mixed-use district will allow the building to be used to its full potential without adversely affecting the surrounding properties. Encouraging vertical mixed-use increases density and creates a more sustainable environment.

KARL KING: From reading the staff report and listening to your presentation, I just want to be sure I have this right. It sounds to me like nothing at all is going to change on this site other than there is going to be an upper level dwelling.

MATTHEW CHAPPUIES: That is correct. The first floor use as well as the exterior appearance is going to stay the same.

SHERYL LUCZKOWSKI: I own Flowers by Stephen located at 4325 S. Michigan Street. I have owned the business for eight years. I purchased the building from the previous owner two years ago on property tax sale. It has not been renovated since the 70's. The apartment has always been up there. It even still has pink shag carpet up there. Before I wanted to remodel upstairs and use it as an apartment, I wanted to change the zoning to make it legal, which required the variances of landscaping area of the perimeters. As you can see I have a fence on the north side, basically it is all pavement. Belle Tire, on the south side, will be putting in landscaping all the way down where you see the dirt on the edge. Then I am going to enclose the dumpster in a fence with some landscaping towards the back because that faces Main Street, so it is considered a front façade on the west. Nothing is changing. The outside we have done some painting, fixing that up, new windows. Before I invest in anything upstairs, other than just turning it into storage, I would like to get that changed so I am legal.

JOHN MCNAMARA: What we are talking about is the brown building?

SHERYL LUCZKOWSKI: The brick one, yes.

#### IN FAVOR

There was no one present to speak in favor of this petition.

#### REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After due consideration, the following action was taken:

Upon a motion by Phil Sutton, being seconded by Robert Hawley and unanimously carried, the variances from 1) the required landscaping of required perimeter yards to none; 2) from the required off-street parking area screening to none; 3) from the required minimum front facade height of 22' to 21'; and 4) from the requirement that trash containers not be located between the front facade of the primary building and the front lot line to allowing trash container between the west facade and the front (west) lot line were approved subject to the rezoning being approved by the Common Council.

Upon a motion by John McNamara, being seconded by Phil Sutton and unanimously carried, the proposed ordinance of Flowers by Stephen & Assoc LLC to zone from CB Community Business District to MU Mixed Use District, property located at 4325 S. Michigan Street, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Allowing this site to be zoned to the mixed-use district will allow the building to be used to its full potential without adversely affecting the surrounding properties. Encouraging vertical mixed-use increases density and creates a more sustainable environment.

## ITEMS NOT REQUIRING A PUBLIC HEARING

1. Miscellaneous:

2. Executive Director's Report:

LARRY MAGLIOZZI: The Town of Lakeville is exploring the possibility of amending their zoning ordinance so they have asked us for some initial meetings which we will start in September. Just to give you a heads up to keep you posted on the status of that and at some point in time we will come back as we get closer to actually drafting a document. It may take a few months, but I want to make sure that they want to do this and have an understanding of what it is going to take.

KARL KING: If Lakeville goes forward, we are going to have updated zoning ordinances for Lakeville and Osceola and New Carlisle.

LARRY MAGLIOZZI: That will leave Roseland and North Liberty. North Liberty, I believe is thinking about it. They haven't actually asked to start the process with them.

What I have handed out is a flyer and I believe I mentioned that the Indiana Conference with the Indiana Association for Community Economic Development is going to be up here in October 7<sup>th</sup> through the 9<sup>th</sup> which is a Wednesday, Thursday and Friday. They usually start Wednesday evening. We are going to take advantage of the Conference up here and we are going to solicit folks to participate in an educational, opportunity, as we are calling it, for both Plan Commission and Board of Zoning Appeals members across the state for whoever wants to or is able to show up. We hope that a lot of the surrounding counties are able to send some of their representatives up for those two and a half hour sessions by K.K. Gerhart Fritz, a long time planner, very well respected throughout the State for her experience and her training ability. I have asked the Auditor to transfer some money into our educational account to cover the \$20.00 fee for any of you who wish to attend that evening on October 7. There will be light refreshments and some kind of food. It is available. There is your flyer that gives you the date and time. Again, if you are interested, if you could express your interest to me via e-mail as soon as you can.

3. Minutes and Expenditures:

A. Approval of the minutes from the July 21, 2015 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Phil Sutton and unanimously carried, the minutes from the July 21, 2015 meeting of the Area Plan Commission were approved.

B. Approval of the expenditures from July 22 through August 18, 2015

Office 360 - \$22.30, \$172.40; South Bend Tribune – \$28-82, \$9.48; Wex Bank - \$15.99

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the expenditures from July 22, 2015 through August 18, 2015 were approved.

4. Adjournment: 5:10 p.m.

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Karl G. King,  
President of the Commission

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Lawrence Magliozzi,  
Secretary of the Commission