

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

MINUTES

Tuesday, May 19, 2015
3:30 p.m.

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

MEMBERS PRESENT:

Daniel Brewer, Adam DeVon, John DeLee, Robert
Hawley, Karl King, Gerry Phipps, Robert
Schrock, Phil Sutton, Jerry Thacker

MEMBERS ABSENT:

Steve Vojtko, Oliver Davis, Ted Penn, Thomas
England, John R. McNamara, Elizabeth Maradik

ALSO PRESENT:

Larry Magliozzi, Angela M. Smith,
Matthew Chappuis, Jennifer Parcell; Staff Jamie
Woods, Counsel

PUBLIC HEARING - 3:30 P.M.

1. REZONINGS:

- A. A combined public hearing on a proposed ordinance of South Bend Public Transportation Corp. to zone from MU Mixed Use District and MF1 Urban Corridor Multifamily District to SF2 Single Family & Two Family District and seeking the following three variances: 1) From the required minimum lot width of 40' to 29' for Parcels B & F; 2) From the required 25' minimum front yard building setback to 15' for all lots; and 3) From the required minimum side yard of 5' or 10% of lot width, whichever is greater, to 4' for all lots, property located at the intersections of Northside Boulevard with Notre Dame Avenue and Frances Street (commonly known as the TRANSPO Site), as tabled, City of South Bend - APC# 2735-15.

ANGELA SMITH: The petitioner is requesting a zone change from MU Mixed Use District and MF1 Urban Corridor Multifamily District to SF2 Single Family & Two Family District and seeking three variances. On site is vacant land. To the north are single family homes zoned MF1 Urban Corridor Multifamily District and Rose Brick zoned MU Mixed Use District. To the east across Frances Street is an industrial building zoned LI Light Industrial District and single family homes zoned SF1 Single Family & Two Family District. To the south across Northside Boulevard is park property adjacent to the St. Joseph River zoned MU Mixed Use. To the west across St. Peter Street is an office building zoned MU Mixed Use District and a vacant lot zoned MF1 Urban Corridor Multifamily District. The SF2 District is established to protect, promote and maintain the development of single family dwellings and two family dwellings in the urban core of the City of South Bend as well as to provide for limited public and institutional uses that are compatible with an urban residential neighborhood. The availability of public facilities (e.g., public water, public sanitary sewer, storm sewer, natural gas, electricity, telephone, etc.) is required for development within this district. The area to be rezoned is approximately 9 acres. The development will include a mixture of single family home types, including townhomes, high density detached homes, and traditional single family homes on 54 new lots. The petitioner is seeking variances to allow 15' front yard setbacks and 4' side yard setbacks for parcels A through F. They are also seeking a variance from the required 40' minimum lot width to 29' for parcels B and F. The site has historically been focused around transportation. Originally the trolley barn for the trolley system, it later became the administration offices and service area for TRANSPO. Northside Boulevard has two lanes. Wayne Street, Notre Dame Avenue and Frances Street are two-lane roads with on-street parking. The City is proposing to extend St. Peter south to intersect with Northside. The site will be served by municipal water and sewer. The Department of Community Investment offers a favorable recommendation. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend

Comprehensive Plan (November 2006) Policy H 1.1: Encourage residential developments to contain a mix of housing types, densities, price ranges, and amenities. The future land use map identifies this area as mixed use and high density residential. The Howard Park Neighborhood Plan (2012) identifies this area as single family residential. The area has a wide mix of uses ranging from single family to industrial typical of an area that was once bordered by a rail line. The most desirable use of land is for medium to high density residential. Due to the low impact of residential development, surrounding property values should not be affected. It is responsible development and growth to support the redevelopment of this area with single family homes, as supported by the Howard Park Neighborhood Plan. This is a combined public hearing procedure, which includes a rezoning and 3 variances from the development standards. The Commission will forward the rezoning to the Council with or without a recommendation and either approve or deny the variances. The petitioner is also requesting the following variances: 1) From the required Minimum Lot Width of 40' to 29' for Parcels B & F; 2) From the required 25' minimum front yard building setback to 15' for Parcels A - F; and 3) From the required minimum side yard of 5' or 10% of lot width, whichever is greater, to 4' for Parcels A - F. 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 project is establishing new lots for residential development. Many of the lots in the surrounding neighborhood have setbacks consistent with the proposed development. While the reduced lot widths will increase density, it will not negatively impact the general welfare of the community because the appropriate infrastructure is already in place. (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 residential development is surrounded by a mix of uses. The low impact of the development should not affect surrounding property values. (3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property. The strict application would prevent the development from instituting a neighborhood layout appropriate to this specific location. Its close proximity to downtown and the river support the request for a more urban residential pattern. Based on information available prior to the public hearing, the staff recommends that the rezoning petition be sent to the Common Council with a favorable recommendation. The staff recommends approval of the variances, subject to the rezoning. Redevelopment of this site for single family residential will strengthen the existing Howard Park Neighborhood and address a demand for urban housing as identified by local developers, real estate professionals, and the Howard Park Neighborhood Plan.

JOHN LINN: I am with Abonmarche Consultants, office located at 750 Lincolnway East, South Bend. As you know this is a redevelopment project. The concept is to build an urban style neighborhood. We are requesting reduced setbacks to enhance the feel of the neighborhood as well as lot width variances to create a little smaller home and have a mix of product, generally from \$200,000 to \$400,000.

GERRY PHIPPS: Some of the lots you are asking for are a width of 29 feet with four foot setbacks on either side. The site plan shows individual houses. That leaves only 21 foot maximum width. Can you describe what those houses would look like?

JOHN LINN: I cannot.

GERRY PHIPPS: Are there plans prepared by an architect?

JOHN LINN: Yes. Century Builders has worked with an architect in their office and prepared floor plans, but this layout specifically is the layout you saw.

ADAM DEVON: Is that part of the Overlay District?

JOHN LINN: That is separate.

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 John DeLee, being seconded by Dan Brewer and unanimously carried, a proposed ordinance of South Bend Public Transportation Corp. to zone from MU Mixed Use District and MF1 Urban Corridor Multifamily District to SF2 Single Family & Two Family District property located at the intersections of Northside Boulevard with Notre Dame Avenue and Frances Street (commonly known as the TRANSPRO Site), City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Redevelopment of this site for single family residential will strengthen the existing Howard Park Neighborhood and address a demand for urban housing as identified by local developers, real estate professionals, and the Howard Park Neighborhood Plan.

Upon a motion by John DeLee being seconded by Dan Brewer and unanimously carried, the following three variances: 1) From the required Minimum Lot Width of 40' to 29' for Parcels B & F; 2) From the required 25' minimum front yard building setback to 15' for all lots; and 3) From the required minimum side yard of 5' or 10% of lot width, whichever is greater, to 4' for all lots were approved subject to the rezoning being approved by the Common Council of the City of South Bend.

- B. A proposed ordinance of the University of Notre Dame Du Lac to zone from R: Single Family District to PUD Planned Unit Development District, property located at 54704, 54716, 54738 Twyckenham Drive & 18389, 18429, and 18449 Vaness Street, St. Joseph County - APC# 2737-15.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from R: Single Family District to PUD Planned Unit Development District. On site are single family homes and vacant lots zoned R: Single Family District. To the north are multifamily developments and a café zoned PUD: Planned Unit Development District. To the east are multifamily homes zoned PUD: Planned Unit Development District and MF1 Urban Corridor Multifamily District in the City of South Bend. To the south across Vaness Street are multifamily developments zoned MF2 High Density Multifamily District in the City of South Bend and a vacant lot zoned R: Single Family District in the County. To the west across Twyckenham Drive are sports fields zoned U: University District. The Planned Unit Development (PUD) District is designed and intended to: encourage creativity and innovation in the design of developments; provide for more efficient use of land; permit special consideration of property with outstanding natural or topographical features; facilitate use of the most appropriate construction techniques in the development of land; and, provide for any individual land use not otherwise specified elsewhere in this Chapter. The PUD District encourages imaginative uses of open space, promotes high standards in design and construction, and furthers the purposes of the Comprehensive Plan. The PUD District is not intended for the development of residential subdivisions or other developments which are provided for as a matter of right within any district of this Chapter. The 1.86 acre site consists of a 1.62 acre lot at the northeast corner of Vaness Street and Twyckenham Drive and a 0.24 acre lot at the northeast corner of Vaness Street and Burdette Street. An 80,264 square foot, 4 story residential building with 4,500 square feet set

aside on the first floor for retail or restaurant space is proposed along Twyckenham Drive. The petitioner is proposing approximately 120 one-bedroom and studio units. The portion of the site east of Burdette Street is proposed as a parking lot, and will only have access from Burdette Street. Parking for residential units will be provided at a ratio of 0.70 parking space per dwelling unit. An additional 5 spaces are set aside for the commercial component, plus 9 extra spaces for guests and overflow parking. The portion of the site that is west of Burdette Street will have access from Burdette Street and Vaness Street, with possible future access to the Overlook PUD to the north. The parking areas will be screened from the rights of way and adjacent buildings by an either landscaping or a combination of landscaping and fencing. Foundation and perimeter landscaping is provided. Signage is limited to on-site monument, projecting, window, and directional signage. Architectural elements and façade offsets are required along street frontages. The properties to the north and east have been rezoned from R: Residential District to PUD: Planned Unit Development District and MF1 Urban Corridor Multifamily District between 2004-2013 to allow for higher density residential and a limited amount of retail space. Vaness Street and Burdette Street have two lanes. Twyckenham Drive has four lanes. This property will be served by municipal sewer and water. County Surveyor recommends approval. County Engineer notes that final site plan will require SWPPP and proper drainage calculations. County Engineer also notes that driveway openings should not be less than 150' from intersections or between openings. City Engineer notes that the site will need to connect to municipal water and sewer. The petitioner is not proposing any written commitments. The petition is consistent with the Comprehensive Plan for South Bend and St. Joseph County, Indiana (April 2002). Goal 3: Objective D: Encourage population growth within existing urban service areas. The future land use map identifies this area as Mixed Use. The Morningside Land Use & Pedestrian Plan (2014) recommends that development patterns in this sub-area generally remain consistent with the current land uses. The area to the north and east has developed into high density housing developments. The most desirable use for the land is one that is compatible with the multifamily residential character of the area. The value of surrounding properties should not be adversely affected. Several other properties in the area are already zoned for higher density residential. It is responsible growth and development to zone this property PUD Planned Unit Development to allow for student housing with an accompanying retail/restaurant use to serve its residents. The staff has no additional comments. Based on information available prior to the public hearing, staff recommends that the rezoning petition be sent to the County Council with a favorable recommendation. This development supports the ongoing need to provide appropriate off-campus housing for University students with convenient access to the University and local amenities.

GERRY PHIPPS: That area on the north end of the building coded orange, is that the commercial or retail section?

MATTHEW CHAPPUIES: Yes. That is the 1,400 square feet that is proposed for retail or restaurant use.

GERRY PHIPPS: Is that right across the street from the retail part of the Overlook?

MATTHEW CHAPPUIES: That is correct. The café is right across the sidewalk that exists there.

STEPHEN STUDER: I am with Krieg Devault, offices located at 4101 Edison Lakes Parkway, Mishawaka. As you have heard this matter comes to you with a favorable recommendation. This project is a continuation of the Overlook I and II buildings that have been developed over the last two years. This would be considered the Overlook III. That project has been a very successful endeavor. This is a continuation of that project, because we need additional graduate housing. Each of you have been handed a small booklet and if we don't mind turning to the Key Facts tab. I will just run through these briefly. This project would have a maximum of 120 units, compared to the 240 units that are

existing in buildings one and two. It would also be dedicated to the University of Notre Dame users, which is defined by graduate, law and MBA students so it is consistent with the same type of renters that we have in one and two. The location on Twyckenham is directly across from the University, which provides a walkable site, and, as the staff has noted, it is important to have easy access to the University. Safety is consistent with buildings one and two. They will have fire compression system, security systems, access will be by a key fob. Again, permit parking only. Violators will be towed. In this particular building we have increased the parking ratio to 0.7. If you may recall, in the earlier one we had 0.65 parking spaces per unit. There will be extensive landscaping as we have already exhibited in buildings one and two including over-story trees along frontages, and landscaping provided along all the buildings. The buildings will essentially match the Overlook with exception of some architectural details. The overall density is not to exceed 66 units per acre. That also compares favorable to buildings one and two where we have 77.55, so we have reduced the density in terms of acreage here. There is a retail café use. Maximum of 4,500 square feet. We allocated at least 20 parking spaces for that retail space. You will see from the elevations again that they will be able to utilize that parking to some extent at the original Overlook. The building will still have 25% occupancy of the entire site and open space will be 22%. If you turn to the second tab in the book, you can see that the elevations. These are preliminary elevations subject to the review of the University of Notre Dame. It will be consistent with Overlook I and II. So you see the architectural detailed setback, etc. You notice on the left hand side, of course, the elevation. There is a similar setback at that retail space. If you go to the third tab, you will see that, to answer Mr. Phipps' question, they actually back up to one another. This corridor which is at the HAWK site has become a very common corridor for people in the entire neighborhood to walk. They used to walk down Vaness Street to Twyckenham and they now walk down this pathway, which we think is a safe opportunity. You will see the café and the Overlook I is on the left side there. This retail space will be immediately adjacent to it on the right side. We just kind of mirrored those architecturally so they will look good together and will basically be on both sides of the walk way. If you turn back one page to the elevation, you will see a couple of things we have done at the very corner, which is the southwest quarter of Twyckenham and Vaness. There is going to be a little more architectural detail because that is going to be a focal point when people drive up Twyckenham. In addition to that, after communications with the County Engineer, we want to make sure there is enough site at that corner so that the utilities can be put underground. We are cutting that corner approximately five feet to allow additional sight advantages along Twyckenham. She was comfortable with that change. There will be one entrance into the parking lot off of Vaness, the other will come off of Burdette. The last elevation is just a close up of that corner again. This is subject to the review of the architect. There could be some additional changes, but the concept is the same. On Tab 3 there is a site plan, I think the staff had that up there as well, if you would like to see that. We ask that you provide a favorable recommendation to the council.

DAN BREWER: I have a question about buildings I and II, the ones that are currently up and running. Are there any undergraduate students living in those buildings?

STEPHEN STUDER: No. It is restricted by both the lease we have and what's provided by the University. It provides housing for graduate students, researchers, post doc, law students, MBA, and there is a methodology in the lease that each of those students is verified with the University that they are eligible for residency in these buildings.

DAN BREWER: With regard to the retail space in Building I, is there any problem parking?

STEPHEN STUDER: I don't know if you were here at this time, but when we originally did Building I and II we had the retail space, we didn't allocate enough space for parking. We came back and purchased a parking lot across Burdette and moved some of the parking spaces over there for the residents

and we dedicated 22 spaces, I believe, for café parking only. So we have more than adequate space. I have been there a number of times and it hasn't been full. There is usually fifteen – twenty cars, so we have more than adequate space there. We have learned our lesson so that if we do retail here we are going to dedicate more than four spaces. We will have about twenty spaces. Most of the people who use the Outlook Café right now walk to it. We have been very very pleased by the success and the reviews that it has gotten in the local newspapers as well as others. Most of them are students that walk there from either these two building or nearby buildings.

IN FAVOR

TIM SEXTON: I am the Associate Vice President for Public Affairs with the University of Notre Dame, offices located at 405 Main Building, Notre Dame, IN. Here today just to convey our support for this. This has been a great partnership with LP Overlook and we are confident that Phase III, which we are looking and discussing today, is going to be a success as well. I do want to go to your point sir. You referenced the housing and who will be utilizing this space. The same understanding, the same lease agreements are going to be in place for Building III. Our graduate student population is the only real growing population on our campus. We are right around 3,500 – 3,600 graduate students right now and that is going to creep up a little bit more. Housing, such as this, in close proximity to campus is extremely beneficial to our graduate students.

REMONSTRANCE

BIANCA FOX: I am here on behalf of the Home Owners Association of Stadium Village, the community that will be surrounded on all three sides by the Overlook if this plan is approved. I reside at 1719 Burdette St. After living next to the Overlook for the last year, we have experienced the following issues: An increase of noise, garbage and traffic in the area; lights along the sidewalk and parking lot of the Overlook that borders the north side of our community shine directly into our bedrooms of our residence at night; as well as interfering with the view from all stories of the affected homes. The north row of homes of Stadium Village have lost all privacy on the ground floors. While landscaping was planted to act as a screen between the two properties, it will be at least several years before these plants are large enough to provide any form of privacy. Finally there have been a diminished view of Notre Dame's campus from our community, a factor that attracted many of our residents to Stadium Village. All these current issues do extend to the current plan. With that being said, we wish to be good neighbors with Notre Dame and express these concerns in hopes that the development company and Notre Dame will take them into account as they move forward with the construction of the new extension of the Overlook.

ASHLEY PENN: Like Bianca, I am a resident at Stadium Village. I reside at 1733 Burdette. Bianca did a great job of expressing our views. My family owns a townhome on the north side. I just wanted to take this opportunity to share some additional detail into what that has been like living there the past year. I am not particularly opposing the project. I am a graduate of Notre Dame and a graduate of graduate school of Notre Dame. My family loves Notre Dame. We are part of the community. I just hope that when this project is built that everyone will take these points into consideration. Understand that our living situation has been substantially impacted by the development. Overall I would like to discuss the setbacks, placement, type of sidewalks, landscaping, lighting and the trash and recycle enclosure. First in regard to the sidewalks, Mr. Studer already discussed the corridor that runs along the entire south side of the current Overlook lot. That corridor essentially borders Stadium Village the whole way and it has really become a thoughtfare for Notre Dame students, mainly under graduate students living in Irish Crossings, Irish Row, Clover Ridge, and many of the other developments in the area, which has been great for the safety and security of those students. The impact to us has been a bit more negative than we

had hoped due to the noise, the trash and the lighting that Bianca discussed. I would just recommend where sidewalks are placed when the site plan is finalized. There was an effort to put landscaping in to soften the hardscape, which most is hardscape because of the parking area and because they are mainly brick. There was an effort to use landscaping, I think, to separate Stadium Village and the Overlook. Unfortunately, we felt that that landscaping was ineffective and insufficient. The trees that were put in place, we were hoping they would be tall enough to kind of block the line of site into our first floors. Most of them are just barely above five feet so they don't do that. (The landscaping around the buildings themselves, so looking farther out around the Outlook buildings themselves, is very minimal). So it has kind of changed the feeling of the area from a residential feeling, even though it was always a high density residential feeling, to kind of a commercial feeling. I think the developers have made a really big effort to have sufficient lighting which again is really important for safety and security in the area and we as a Notre Dame community appreciate that. Particularly though, the light posts were placed on the Stadium Village property line, in our case in front of our unit, just over three feet off the property line really close to the property line. The light post in front of our unit was a thirty foot parking light post rather than a smaller walk way light post and that light post is very bright, we notice it every single night we go to sleep. Even though we have blinds down and blinds that are meant to block out the light, there is still a glow coming through the windows. Finally, the trash and recycle enclosures. I think there was a good effort made to really block those off and have really high walls around them. I would just recommend, again, that those not be placed, if possible right in the back yards of the Stadium Village homeowners. Just to give some perspective, Stadium Village was built to have the back yards essentially be the hangout areas. Finally, I just want to make one point. I wanted to make a point of the height which Bianca discussed as well. The Overlook is the only project in the area that is four stories tall. I wanted to reiterate the point about landscaping generally. I think one of the great things of Northern Indiana is the greenery and it seems that this area east of campus that has been really been lost. I hope going forward we all make an effort that we are not taking out too many trees, and if we are that we are replacing them.

GREG Ettl: I reside at 54360 Palmer Street. I am not here to say I am opposed to it. I happen to own the property at the southeast corner of Vaness and Twyckenham and I am just here to ask you how the utilities are going to supply the Overlook III. How will my property be impacted? I have heard all kinds of stories of the power lines and I am not getting anywhere as how things will take place. I am not moving as quickly to develop my property, I would just like to know if I am going to adversely affected.

REBUTTAL

STEPHEN STUDER: I think, as we heard, none of the remonstrators were against the project but they certainly want some things addressed. I will tell you that we did have representatives of the developer meet with the Home Owners Association, and these are new issues that were not raised. But, with that said, we are more than willing to sit down with them. We have an on-site manager during business hours and we also have security every night so some of these issues are new to us. We try to address them and sit down and talk about them. We do know that we comply with code requirements in terms of lighting, but we can certainly look at if there is additional shielding that can be done, landscaping, those types of things. It is difficult and I can have Mr. Danch answer Mr. Ettl's question about the utilities, but there is nothing specific here other than we are willing to sit down with them. We do know that undergraduates do use that pathway and again are encouraged by that. We think that is a better way for them to come to campus than Vaness and crossing over. As you may know the University and others have put a fence so they don't cross Twyckenham except at the light. I am sure we have the names and address of the concerned and the developer will be happy to sit down with them and talk about the concerns. These are new issues for us.

MICHAEL DANCH: I am with Danch, Harner and Associates with offices located at 1643 Commerce Drive. We are working with Bob Strausburg over at AEP. Right now there is a set of power lines that is located at the north side of Vaness Street. There is also a set of power lines that run up Twyckenham Drive. I believe those are running on both sides of Twyckenham. They will probably move the power poles that we have to the south side of Vaness. There is also from Mr. Ettl's property east, just before you get to that apartment complex, I don't remember the name of the complex, a north-south alley that is a public alley and they would be able to run the utilities there. They would probably be re-routing the electric on the south side of Vaness to the northwest corner of that complex and possibly running them down that existing alley which is on the east side of Mr. Ettl's property. It would not impact him except that it would allow, if he did development on his property, there would be power lines available for them to run power directly to his property right now. What AEP was going to do from some of the conversations that we had, those lines that are going further south, there are a couple existing twelve foot wide east west allies that run back to Twyckenham Drive. They would run the power back over to Twyckenham. That was our understanding of what they are going to look at. If they can place any of the utilities in the ground, AEP will be doing that as well. It will take them a while to make their final plan. It may be several months for them to make the final determination.

JOHN DELEE: I didn't hear any comment on the height of the building. Is four stories allowed on this property?

MICHAEL DANCH: Yes it is. That is part of the PUD developmental standards. We try to be consistent with the other developments that were done on the Overlook and what was done for Dunn Flats. There isn't anything that isn't inconsistent with that. The staff had also asked us to take a look at what was at the northeast corner of Vaness and Twyckenham for some architectural features on the structure since that is basically a gateway to that particular area so they wanted something different done on this particular building. There is going to be an additional architectural feature that will be put on the building for the corner.

After due consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Robert Schrock and unanimously carried, the proposed ordinance of University of Notre Dame Du Lac to zone from R: Single Family District to PUD Planned Unit Development District, property located at 54704, 54716, 54738 Twyckenham Drive & 18389, 18429, and 18449 Vaness Street, St. Joseph County, is sent to the County Council with a FAVORABLE recommendation. This development supports the ongoing need to provide appropriate off-campus housing for University students with convenient access to the University and local amenities.

- C. A proposed ordinance initiated by the County Council of St. Joseph County, Indiana to zone from O/B: Office/Buffer District to R: Single Family District, property located at 15316 State Road 23, St. Joseph County - APC# 2740-15.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from O/B: Office/Buffer District to R: Single Family District. On site is a single family home. To the north across State Road 23 is a single family home zoned R: Single Family District. To the east is a single family home zoned R: Single Family District. To the south is a vacant lot zoned R: Single Family District. To the west is a single family home zoned R: Single Family District. The R: Single Family Districts are established to protect, promote and maintain the development of single family dwellings as well as provide for other limited residential, public and institutional uses that are compatible with residential development located at the periphery of an urban area. Rezoning and petitions to R: Single Family District do not require a site plan. In

September 2013, the County Council denied a petition (APC #2678-13) to rezone this site from R: Single Family District to O/B: Office Buffer District. In July 2014, the County Council approved a petition (APC #2706-14) to rezone this site from R: Single Family District to O/B: Office Buffer District. S.R. 23 has four lanes and a center turn lane. This property is served by private well and septic. The County Engineer and County Surveyor recommend approval. The petitioner is not requesting any written commitments. The petition is consistent with the Comprehensive Plan for South Bend and St. Joseph County, Indiana (April 2002). Goal 3: Objective A: Promote the development and/or maintenance of community and neighborhood character. The Future Land Use Map identifies this area as a Residential Growth Area. In 2007 and 2008, a series of public meetings were conducted with interested Harris Township residents and groups in an attempt to reach consensus on a land use plan for State Road #23 between Grape Road and Adams Road. A plan was not adopted, but the latest draft showed the land use between Filbert Road and Santa Monica remaining residential. The portion of State Road 23 between Filbert Road and Santa Monica Drive is residential in nature. The commercial node that exists at Fir Road includes two gas stations, a drug store, a car wash, and the St. Pius X church and school. There is also a developing office node just west of Filbert Road containing a dentist office, a hair salon, a vacant business, and two vacant parcels. West of this area begins the heavy commercialized area of Gumwood and Grape Roads. The most desirable use for the land is one that has the least impact on the surrounding residential properties. Allowing this property to remain residential would not adversely affect surrounding property values. It is responsible growth and development to maintain community and neighborhood character. The staff would note that it was not in support of the prior two petitions to zone the property from residential to office buffer. Since no other zoning changes have occurred in the immediate area, rezoning this property back to a residential classification maintains the integrity of the surrounding area for residential uses. Based on information available prior to the public hearing staff recommends that the rezoning petition be sent to the County Council with a favorable recommendation. The O/B Office Buffer District was established to provide a natural progression of site use intensity between residential and full commercial uses. Since this site is surrounded by single-family homes and residential zoning, allowing this site to remain zoned to allow office-type uses is inappropriate land-use practice. The established commercial and business nodes located between Fir Road and Brick Road and west of Filbert Road should remain the focus for business development. Filbert Road and Santa Monica Drive provide direct access to large residential developments, and this area of State Road 23 should retain its residential character.

DAN BREWER: Who owns the property?

MATTHEW CHAPPUIES: Mr. Cole. I believe he is here today.

GERRY PHIPPS: It is a Council initiated petition?

MATTHEW CHAPPUIES: That is correct.

COUNCILMAN JAMIE O'BRIEN: I am Councilman for District C. I reside at 15822 Cedar Ridge Court, Granger. Last July the County Council approved the rezoning of the property to Office Buffer. The property was listed for sale as residential until August 18. Then it was relisted in October. What you have in front of you is exhibit A, B and C. Exhibit A is an excerpt from the County Council minutes from July 9 where Mr. Cole, the owner, who I believe will give you his input here shortly, had several statements that I have highlighted on the exhibit A. The first one where he is stating he is "intending to use this as his office, if he can't use it as office, he will have to rent an office somewhere else". Goes on to say that "I have no intention but to use this as a real estate office and trying to make a living doing this", then he again says "I said this is not on the market, I took it off because I would like to use it as my office". I believe that the subsequent events have not been consistent with his representation to the

Council. Exhibit B shows that the property continued to be listed for a least a month after the County Council approved the rezoning. Then it was taken off the market and then approximately three months after the rezoning, relisted. It continued to be relisted until early March, at which point that was about the time I prepared and filed a (not a good) petition to rezone council Attorney Mike Tripple helped me revise the petition and refile in a format that you are accustomed to seeing. It was taken off the market shortly after that. Exhibit C is a recent e-mail that Mr. Cole sent to me where he is referring to having lease agreements for the property, which I point out is also inconsistent with his representations to the County Council that his desire was to have this for his office. I believe that while this is out of the ordinary to have the Council initiate a rezoning, Mr. Tripple, conferring with Mr. Heppenheimer concluded that this is within a statutory, regulatory framework. While this is something that is a little out of the ordinary, I believe that since there are no restrictions or commitments for the initial rezoning this is the proper course, since the property has clearly not been utilized as the representations were made. Mr. Cole's actions for six months after the rezoning tried to sell the property. If it is put back to residential, it would be nice yellow within all the other residential. If after the rezoning back to residential if the owner decides he wants to seek a rezoning and explain uses that might include reselling the property or use it for other uses, that would then give you all as well the County Council the ability to make a decision based on those facts. I would ask that you please consider what I have conveyed here and favorably recommend my request for rezoning back to residential.

DAN BREWER: This is unusual. Does the County have the right to rezone property that is owned by someone else?

COUNCILMAN JAMIE O'BRIEN: That is what I tried to explain. I conferred with County Council attorney Mike Tripple who conferred with your attorney Mitch Heppenheimer and concluded that is the case.

DAN BREWER: And the grounds for the County taking this action is?

COUNCILMAN JAMIE O'BRIEN: In this instance because of the statements of misrepresentations upon which the rezoning was based.

DAN BREWER: Isn't a court room a better place to do this?

COUNCILMAN JAMIE O'BRIEN: The administrative procedure act would presumably require the exhausting of the administrative appeal process, which this is an administrative body.

JAMIE WOODS: I have reviewed Indiana Code 36-7-46-02 which allows any participating legislative body that would be involved in the decision to initiate a proposal to take a different approach after it has been adopted. So, here in St. Joseph County, the participating legislative body, in this case is the St. Joseph County Council and it is the rules and procedures of the County Council that one member may initiate a proposal. There is no requirement under the statute that it has to be by ordinance so it's my belief as well that what is being reflected by Councilman O'Brien as a member of the St. Joseph County Council is completely appropriate.

PHIL SUTTON: Did previous parties that were against it, ask you to initiate this?

COUNCILMAN JAMIE O'BRIEN: I don't recall whether or not the person that brought this to my attention was one of the parties that was previously opposed to it. If you are asking if St. Pius asked me to do this, the answer is no. That is what Mr. Cole is repeatedly trying to suggest. The person who brought it to my attention back in January is a member of St. Pius. I don't know if he was in the process

six or eight months ago. I am also a member of St. Pius for that matter. I drive by there every day. I have seen in the last six months no activity or efforts to develop it into an office.

DAN BREWER: It just seems a little unusual. We hear representations all the time from petitioners. Sometimes we have written commitments from petitioners to do something or not do something with property in order to get a favorable recommendation. This looks like in all the cases if there were a breach of one of those commitments the County Council would be able to enforce them by coming back here and changing zoning.

JOHN DELEE: Sure.

DAN BREWER: The City Council in the case of the City, they can reargue the zoning?

COUNCILMAN JAMIE O'BRIEN: If you ask me something like the tax code, I could answer that. I am an attorney Mr. Brewer, but I am not specialized in that.

DAN BREWER: It is just troubling to me that a landowner would have that much insecurity.

COUNCILMAN JAMIE O'BRIEN: Insecurity would not exist if the performance were consistent with representations. So, if there were written commitments, which you typically see with the commercial redevelopment with the commercial rezonings, like the Overlook property, but if there were commitments due to landscaping, then there would be an enforcement mechanism. This is out of the ordinary, but I believe it is within what is permitted by Indiana Law. I would respectfully request that you give it a favorable recommendation.

DAN BREWER: Those kinds of commitments for setbacks or landscaping that you just eluded, the appropriate way for that to be enforced is through the building department. Not to go back and rezone.

COUNCILMAN JAMIE O'BRIEN: Sometimes you see restrictions or use commitments where when someone ceases to use a property for a particular use, then they revert back or other limitations.

DAN BREWER: Does it revert back or does it have to be enforced through the Building Department?

COUNCILMAN JAMIE O'BRIEN: I don't know.

KARL KING: In your exhibit C handouts which appears to be a print out of an email from Larry Cole to you, as I read this quickly it sounds that Mr. Cole is not in favor of this rezoning.

COUNCILMAN JAMIE O'BRIEN: I believe you are correct. I also believe you will hear from him shortly and he is going to say he doesn't want to rezone it.

KARL KING: This is an action that you have initiated not to help the property owner. Could you explain to us why this being initiated.

COUNCILMAN JAMIE O'BRIEN: Sure. To make sure the property is used consistent with the overall plan for the area. To make sure that the property if it is going to be used for the rezoning purpose that it be used as represented. I opposed the rezoning initially. I did not think it would fit within this area. It was in my opinion significant opposition at the time. It struck me as some type of spot zoning at the time. I did not think it was right at the time. I want to put it back in the equilibrium that it was beforehand.

IN FAVOR

DOUGLAS MERRITT: I reside at 2319 Lincolnway East. The Merritt family property is the property directly west of the subject site. I am here before you today and have attended every meeting including the County Council. I initially came out against this proposal because it is spot zoning. If you look at the map it is surrounded by residential uses. There are illegal businesses being run along State Road 23. The Building Department is aware of that. Many of those businesses don't even have any signs. They are just simply older homes and they are offices. They have turned into offices. With that you typically find really more of a residential feel. These buildings have been residentially maintained. The lawns are well kept. We have two properties in the immediate vicinity that are not maintained. They are up for sale, which is unfortunate. For the long term growth plan, I would like to see this particular area all the way from the St. Pius properties all the way down to Arborwood be annexed by the City of Mishawaka and maybe a major developer can come in and do something with the entire parcel of land. I don't see that happening anytime soon. My family has been on that property since about 1965. We have seen just about every single change that could possibly occur along SR 23 since 1965. I can tell you at this point that because Mr. Cole has not occupied this building which looks like a house, it's a single story typical built ranch as a business, I am in support of Mr. O'Brien's position. We really had no opportunity to appeal the Council's decision when we knew it was a very tight vote. It came to this body, it was denied twice and again we are back in the same position. The fact remains that the building is still unoccupied. It was never an office. It was always with a large sign and dance that he was going broke and he needed this business space to promote his business. So by a very, very narrow margin the Council decided that they were going to allow this. A for sale sign lingered in the yard, no activity occurred. My grandmother monitors the property daily. Her kitchen window directly looks at this house. There is no business. It is just a vacant structure that will hopefully sell at some point. I am hoping that it sells residential. I would like to see that this plan, which now has a spot zone property go back to being all yellow. Again, a large developer could come and take the entire stretch of land between Old Cleveland Road and State Road 23 from about Arborwood to St. Pius and do something proper. Bring water, utilities and sewer from Mishawaka that is already on the back side of Old Cleveland and now, as I understand, out at Beacon Parkway fully develop this area in a proper manner. This is spot zoning. The Council was wrong to zone this OB. It has no business around it, it does not act as a buffer to a more intense use. All the properties around it are residential. Again it is spot zoning. I thank you for your time. Again I, have been here at every single meeting, every opportunity to speak against the initial request so today I am here to support the Council and the Council Attorney in their efforts to return this back to a residential property.

GERRY PHIPPS: Mr. Merritt, I think you told us back a year ago that it is your grandparents that live there?

DOUGLAS MERRITT: That is correct. In fact, my grandfather died this past Friday.

GERRY PHIPPS: I am sorry to hear that. I would expect that your grandmother at some point wanting to move, and you will have that property up for sale. Do you think you will be able to sell it as residential?

DOUGLAS MERRITT: Really to be honest with you, we plan to retain the property. Again it has been in the family. It has been paid for since the late 60's. Really we would maintain it as any other good tax paying citizen would. Keep it up. The State came in and expanded the highway. The right of way went through the original homestead kitchen. We were forced into a new home. We have seen every change out here. So to answer your question, I don't think we are interested in selling the property. Someone from our family will more than likely move into that property. There is quite a bit of acreage

there and none the less they will have to deal with me and it will be residential.

REMONSTRANCE

LARRY COLE: I reside at 15234 Grand Vista, Granger. I am the owner of the property. I have some exhibits that I would like pass out. I too think this seems out of the ordinary and it makes me concerned that I can't relax. It is because Jamie O'Brien went to St. Pius and had children in the school that maybe there was a vendetta here by St. Pius but that is neither here nor there. I petitioned to have this zoned office buffer twice. At the second meeting I realized what I had to do to talk about spot zoning and I brought many, many examples of spot zoning all the way down SR 23 down to Ironwood. I didn't even think I would have to do that again. So I think to talk about spot zoning isn't the issue here. Jamie O'Brien said that I didn't take it off the market until a month later, but if you look at the first page, that is the MLS listing for the commercial listing I had says cancelled. The second page shows you that the status was withdrawn on June 17. I think that was the same day the County Council approved it. I went straight to the office and took it off. There was also a residential listing that said \$129,000 that was MLS #679310. The third page says cancelled. The fourth page shows you on the MLS printout that I did just yesterday. It too was withdrawn on June 17th at 5:04 p.m. So I took this off the market the very day the County Council passed it. They alluded to the fact that I said I wanted to use it as an office and I am not doing that. I just went through my e-mails. I don't delete my sent emails for this reason. Page five shows that I called Todd Ebard at Espire Construction at outlook.com, "I am trying to make a house at 15316 SR 23 my real estate office, I need some plumbing and bathroom finishing work. Call me when you get out there to give an estimate." He responded in email two, I said "yes 15316 SR 23 one half block west of Fir." That was on August 9th. The next email, I went through Craigslist looking for aluminum pieces because I needed to build a sign and signs aren't cheap. The next email says I couldn't use the aluminum pieces. "Sorry I couldn't use it as I originally thought." I searched for huge commercial light up sign. I found out that in my zoning you can't have a sign higher than four feet. So I started looking for signs. That was September 26th. Here is another one "lighted business sign", September 25th. Mishawaka Brewing signs, September 9th. Further on Ryan Sobecki, he is an IT in the area, maybe some of you know him. I know he has done work for Mr. O'Brien or knows Mr. O'Brien from acquaintances like that. He talked to me about cubicles for that same building. I talked to Jerry Vassel about office partitions; I sold him a house in Coppercreek. "Can I come see the partitions?" I now have those and I have a picture of those on the back to separate the kitchen from the living room. Stewart signs is one of the quotes that I got for new signs. Down below says I quoted a sign with cut vinyl. I said I would be negotiating with the BZA for placement of the sign and size of sign, but I may be using two 3 foot by 8 foot one sided signs in a "V" arrangement because I have to set it so far back, unless I get a variance. Based on the prices I have seen I will probably be looking for used. I have talked with the Building Department I emailed Carolyn (Henry) after she told me that if I wanted to be higher than four foot, even though they said they would like to make it five foot because four foot isn't high enough. It is not that case now, maybe if I wait it will be five foot. So I emailed her back and said "thank you for your gracious assistance. However, I am exhausted with petitioning the Area Plan people about my office buffer zoning for two years in a row, therefore, I am not going to do it again for the sign. I will just comply with current design standards and be done with it. I am just happy I got zoned office buffer, thank you any way for your help and please tell Mark Lyons thank you also."

I took it off the market the day of. I would like to lease part of this building because I can't afford to keep it all. I can't pay the property taxes and I am broke. God Bless it. I just got a roof on my house because of hail damage. I had to put the sign back up because no one approached me. The sign that I left in the front yard, I took off-for sale and put up office, because it was my office at that point. Thinking that people would approach me about it. In real estate you will find and if any of you are

realtors you will know it seems like more people ask you, “would the owner rent or lease that instead of buy it?” It seems like no one has any money to buy now. So I thought I might get someone to talk to me about lease and I didn’t want to put a sign up that says for lease because then I don’t know about the discrepancy laws and who wants to lease my building. You have to be very careful about who is going to lease it and I don’t want to lease half my building to a slob. So I didn’t want to put for lease and then be constrained by law to lease it to whoever happens to come there. One person did approach me about leasing it and at that very moment they came into the building to talk to me, I said lets go right now to your house. I don’t want you to tell me to come Thursday, I want to go right now to see how your house is. If your house is indicative of how you take care of your place, maybe I will talk about it. When I went there I couldn’t stand the smell, so I relisted the property somewhere in October because people who see it would call me and say “will you consider leasing it. That is one reason I listed it. Another reason to relist the property is because the last listing said \$129,000. Now it is zoned office buffer, so I wanted to give it the presence that it now has a value of commercial property because when I talk to people about a lease the first thing they do is find out what it sold for. Now they want to buy it for \$129,000 so that was another argument to relist it. The third argument to relist it is, I don’t have very many listings. I am very happy that I sell most of my listings and one of my arguments when I go to sell a house is if you hire one of those guys that has 65 listings he probably sells 32 of them. There are 33 people who are disappointed because their listing didn’t get sold. If I list their house I am going to be very diligent about selling it and when I list it it will sell. I will try my hardest. When I first went on a service call, it was a house in Granger and he says, how many listings do you have in Granger? I wish I would have brought the email I don’t get his listing. It is probably going to sell quick. I don’t get his listing because I only have four listings. It is another advantage to have a number of listings and I would like to work on that in the future, but I don’t have enough listings.

DAN BREWER: Excuse me, I have a question for Mr. King. Because Mr. Cole is responding is his time not limited?

KARL KING: His time is limited. He has about one minute left.

DAN BREWER: Ok.

LARRY COLE: The Dr. emailed me on January 1st about leasing it. I emailed him back, I got some software to make some plans on the house. I emailed him back and the next thing he says is that he wants to lease that half. Later on he gives me some plans and that is what you see on the next page. The next page is a text he got today from one of the builders. He is waiting to hear how this turns out because he can’t lease it if it goes back to residential. This is an AT&T bill that shows service was restarted August 19 so that I could sit in there with phone service.

KARL KING: Mr. Cole, I am really going to have to ask you to wrap up here. You are over the time limit that we have for speakers.

LARRY COLE: I installed a humidifier. I have receipts that show I put file cabinets in there. There are pictures of the humidifier and the file cabinets. There are pictures of the new sign I bought, that I need to paint. There is a drawing of how I am going to arrange the file cabinets in the office. There is an Anthem Blue Cross that shows Obama care just went up for me to \$382.00.

KARL KING: Mr. Cole. Please conclude your remarks. If there is anything you would like to say in closing, please do it now.

LARRY COLE: I am done, thank you.

REBUTTAL

COUNCILMAN JAMIE O'BRIEN: It sounds like Mr. Cole asserted his efforts in August and September thinking about making this into his office, the problem is that after that did nothing further. He told the Council it was going to be his office, wanted it for his office, listed it for sale looking to get a tenant in there, he didn't say anything about renting it. If I understood it right, and I am not as familiar with this process as I should be, the staff's recommendation is to put it back as residential. That is my request. Ultimately, based on your recommendations, the Council will deliberate and make a decision as well. I notice this is not the final say, but I would certainly appreciate your consideration.

DAN BREWER: I would just say, I don't think this is appropriately before us. The issue isn't whether or not Mr. Cole has done what he said he would do or whether he is operating in good faith. The issue is the process here. We have a government body, the St. Joseph County Council, who regrets what they did some time ago changing the zoning. Now, they are coming back and wishing to reverse their action. Without the consent of the homeowner it seems to me that this is a taking. There are provisions in the law for the County devaluing someone's property by eminent domain or other processes, but not by simply going back and re-voting. I don't think we should even issue a favorable or unfavorable recommendation. If we have to do so, I would say it is an unfavorable recommendation.

KARL KING: Are you issuing that as a motion?

DAN BREWER: I would be happy to hear what anyone else has to say before doing so.

GERRY PHIPPS: If you make that a motion, I will second it

DAN BREWER: So moved.

GERRY PHIPPS: I think there is a legitimate reason why the Council might try to reverse the decision if there really was deception or lack of progress. While I can understand where Mr. O'Brien doesn't feel that ten months or something is fast enough, I think we generally give developers or someone building a little bit longer than that to get started. I can understand Mr. Cole's difficulties in getting it improved. It does sound like he has been using it as his office.

After due consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Gerry Phipps and carried, the proposed Ordinance initiated by the County Council of St. Joseph County, Indiana to zone from O/B: Office/Buffer District to R: Single Family District, property located at 15316 State Road 23, St. Joseph County, is sent to the County Council with an UNFAVORABLE recommendation.

PHIL SUTTON: Mr. Chairman, do we have enough people?

KARL KING: I think we do. We have to have more than half of the total membership.

JOHN DELEE: We only have eight votes.

KARL KING: We don't have eight, so that motion fails.

PHIL SUTTON: Yes we do.

JAMIE WOODS: We have nine people here.

KARL KING: But we have one nay.

JAMIE WOODS: There are what, fifteen on the board?

KARL KING: Let's have a show of hands. All those in favor of sending this to the County Council with an unfavorable recommendation, please raise your hand.

JAMIE WOODS: That is eight.

KARL KING: So the motion fails?

JAMIE WOODS: No the motion carries by either a majority of those present or the majority of the entire Plan Commission.

KARL KING: I thought it was nine?

JAMIE WOODS: You are a fifteen member Plan Commission.

KARL KING: You are right. The Commission has been reduced in size by one. It was sixteen.

JAMIE WOODS: Any way you slice it.

KARL KING: The only way to slice it is that it has to be a majority of the total membership, that is what our by-laws state. So the motion does pass. 2740-15 will be sent to the St. Joseph County Council with an unfavorable recommendation.

- D. A proposed ordinance of South Bend Self Storage LLC to zone from GB General Business District and CB Community Business District to PUD Planned Unit Development District, property located at 605 North Hickory Road, City of South Bend - APC# 2741-15.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from GB General Business District to PUD Planned Unit Development District. On site is a former retail space that has been converted into mini-warehouse storage units. To the north are single family homes zoned SF1 Single Family & Two Family District. To the east is a vacant lot zoned PUD Planned Unit Development District and a Dollar General store zoned CB Community Business District. Across Hickory Road is a multi-tenant shopping plaza in the City of Mishawaka. To the south are retail stores and an Elks Lodge zoned CB Community Business District. To the west is a vacant lot zoned PUD Planned Unit Development. The Planned Unit Development (PUD) District is designed and intended to: encourage creativity and innovation in the design of developments; provide for more efficient use of land; permit special consideration of property with outstanding natural or topographical features; facilitate use of the most appropriate construction techniques in the development of land; and, provide for any individual land use not otherwise specified elsewhere in this Ordinance. The PUD District encourages imaginative uses of open space, promotes high standards in design and construction, and furthers the purposes of the Comprehensive Plan. The PUD District is not intended for the development of residential subdivisions or other developments which are provided for as a matter of right within any district of this Ordinance. The 10.61 acre site contains a 128,614 square foot building, previously used for retail. A 30,000 square foot retail space is proposed with the remaining 128,244 designated as self-storage warehousing space. A portion of the structure is currently being used for self-storage warehousing. A total of 117 parking

spaces will be provided for all uses. The west property line, north of the building, will be screened using either a fence or landscaping. The existing freestanding sign along Hickory Road will remain and may not be increased in height or area without proper approval as per the City zoning ordinance. Prior to the adoption of the current zoning ordinance in 2004, the site was primarily zoned C Commercial with the northern 120' zoned B Multifamily. In 2011, the property to the west and an outlot fronting on Hickory to the east was rezoned to PUD (APC# 2597-11) for a self-lock storage project, CB Community Business uses, and single or multi-family residential uses. A secondary site plan has not been submitted. In 2014, the majority of the site was rezoned to GB General Business District (APC# 2704-14) to allow for mini-warehouse storage units with a Special Exception Use for outdoor storage. Hickory Road has four lanes and a center turn lane. This property is served by municipal sewer and water. The County Surveyor and Department of Community Investment offer a favorable recommendation. The City Engineer notes that approval will be subject to a drainage plan and final site plan review. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006). Policy ED 1.2: Encourage reuse of abandoned and underutilized land and structures. The future land use map identifies this area as Medium Density Residential. There are no other plans in effect for this area. The McKinley Avenue and Hickory Road area is a large commercial node with a mixture of uses. The most desirable use for the land is one that is compatible with the commercial and mixed-use character of the area. Any improvements to the site, including screening, should not adversely affect surrounding property values. It is responsible growth and development to allow retail uses within this repurposed building, and to allow outdoor storage within its underutilized parking lot. (Outdoor storage may be permitted on the site, but will be limited to a maximum size of 20% of the gross square footage of the building. Any outdoor storage may not encroach within 50' of any property line, or within 200' of the north property line, and will be required to have screening in the form of an 8' fencing or landscaping). Based on information available prior to the public hearing, staff recommends that the rezoning petition be sent to the Common Council with a favorable recommendation. This site is suited for uses allowed in GB General Business District, LB Local Business District, and CB Community Business District. Zoning to PUD Planned Unit Development District will allow for a wide range of compatible commercial uses not explicitly listed in any single zoning district.

GERRY PHIPPS: On the site plan it shows the total building area of 158,000 square feet, I think the existing is 128,000, so is the additional 30,000 square feet those two storage buildings along the north edge?

MICHAEL DANCH: I am with Danch, Harner & Associates with offices located at 1643 Commerce Drive. There is a basement area in that building that is about 30,000 square feet. What we did was include that as the total square footage. On the site plan for the tabulated data you always show what the first floor is but for calculating the outside storage it is the total square footage of the building including that additional 30,000 square feet.

GERRY PHIPPS: Ok, so there isn't going to be 30,000 feet of new building going up?

MICHAEL DANCH: Right. This is the old Steve and Barry's. South Bend Self Storage had purchased the property. We actually had gone through a rezoning process last year to zone it from CB to GB to allow for that outside storage and I also had to have a special exception approved by the City Council for the outside storage. Since that point in time they have actually moved into the building. They are doing storage in the facility. What we have found, though, is now that the building is being used, now that they have fixed it up, they actually have people interested in opening up retail in the building itself. When we took a look at the zoning

ordinance, to the GB category really limits the amount of retail-type uses you can have. The way the South Bend Ordinance is, it does not fall back to CB or LB which are lighter retail uses. You are stuck with the GB uses. Because of the way the ordinance is written, there is really no way to allow for those lighter commercial uses in this building under the GB category. The only way to do it is to ask for the PUD district, which will open up the existing building to a variety of GB, CB and LB uses. Otherwise, you would try to rezone or split the building and rezone a portion of it to CB or LB, which is too complicated to do. The PUD allows for flexibility for the use of this building. If the South Bend Zoning Ordinance were to change and they revised the ordinance itself so that under GB it says you are also allowed to CB and LB uses, that would make it a lot simpler. The old South Bend Ordinance used to be written that way, but this particular ordinance that we are dealing with does not allow that. If you go to GB, I can't go back to LB or CB for a lighter retail. What we are asking is that we go to the PUD district. We came up with development standards that the staff would like us to use for setbacks, screening, landscaping and parking requirements for this PUD which would cover a variety of GB uses, community business uses and local business uses. The PUD in this case appears to be the best way to go for what we are trying to achieve, which would be to allow that building to be used for some retail uses as well.

GERRY PHIPPS: Is that just that narrow strip along the north edge of the existing building that is colored?

MIKE DANCH: That is the canopy for the building. So, if you remember the way this used to be laid out, there was Steve and Barry's. A long time ago the east side of the building used to be the Martin's Supermarket. There is a pretty good size area in there. What we have shown at the very bottom corner was potentially a site that could be used for one of those commercial uses. Because it does have frontage out onto Hickory, that would be a great place for an outlet. That is right across from the Dollar General.

ROBERT HAWLEY: Could you highlight the screening you are talking about?

MIKE DANCH: The screening goes all the way along the very north side of the property. Those evergreen trees are about six or seven foot now. That is what is required for the rezoning to be GB. That is the screening that you see all the way along that north line. Those will increase the size. One thing you don't want to do with pine trees is put them close together because when they get mature you will lose the bottom branches. That will fill in. If you remember, this particular site is up against residential houses. There is also a lot of scrub vegetation that is right on that property line that will be remaining there. If you remember the one gentlemen had shown up that lives on the corner of Sorin and Hickory, to put a note on the drawing that says we will put some vinyl fencing up there as well. It was not required when we did the GB, but we are going to go ahead and do that. The other landscaping is that when you do the retail use and parking lot areas you have to have the parking islands with the trees, so will be doing that as well.

IN FAVOR

ANNABETH BUCKLEY: I reside at 3428 Sorin Street. I would like to speak in favor of this. The

last time we were here they were speaking of putting housing on that lot. Me and a few others were totally against it. So I am in favor of retail stores because at least I know stores close at certain times and there is not the noise and what we are hearing now the screeching of tires. Someone is still using that lot at night. The young people are. Every now and then we have to call the police and they come out and clear the lot. I think that it would be a lot better for retail than housing because if you have housing there, which I hope won't happen in my lifetime, then you know you are going to have people coming over your fence it's just not just a good idea. Mr. Hall is the one who spoke last year. I think it is a good idea.

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 John DeLee, being seconded by Robert Schrock and unanimously carried, the proposed ordinance of South Bend Self Storage LLC to zone from GB General Business District and CB Community Business District to PUD Planned Unit Development District, property located at 605 North Hickory Road, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. This site is suited for uses allowed in GB General Business District, LB Local Business District, and CB Community Business District. Zoning to PUD Planned Unit Development District will allow for a wide range of compatible commercial uses not explicitly listed in any single zoning district.

- E. A combined public hearing on a proposed ordinance of New Paris Development Co. LLC to zone from MU Mixed Use District to LB Local Business District; seeking a Special Exception Use to allow for a tattoo, body piercing establishment; and seeking the following two variances: 1. from the required 12 parking spaces to 0; and 2. from the required 500' separation from a religious use to 20', property located at 2212 Mishawaka Avenue, City of South Bend - APC# 2742-15.

MATTHEW CHAPPUIES: A combined public hearing on a proposed ordinance of New Paris Development Co. LLC to zone from MU Mixed Use District to LB Local Business District; seeking a Special Exception Use to allow for a tattoo, body piercing establishment; and seeking two variances. On site is an existing retail building. To the north across Mishawaka Avenue is a gas station and convenience store zoned CB Community Business District. To the east is a church zoned MU Mixed Use District. To the south is a single family home zoned MU Mixed Use District. To the west is a tavern zoned MU Mixed Use District. The LB District is established to provide for small business groupings located outside of the village style mixed use concept and which provide for the full range of convenience uses necessary to meet the daily needs of nearby residential neighborhoods. Permitted uses within the LB Districts are regulated in character to assure harmonious development with the nearby residential districts served and are limited in size and scale to promote pedestrian access. On site is a 3,300 square foot retail space abutted by similar buildings to the east and west. The front façade of buildings along this block abut the sidewalk with a 0' setback. There is a paved parking area behind the building that is shared with the other businesses. This site has been zoned MU Mixed Use District since 2004. Mishawaka Avenue has two lanes with a center turn lane and on-street parallel parking on the south side of the street. This site is served by municipal water and sewer. County Surveyor, City Engineer, and South Bend Department of Community Investment recommend approval. The petitioner is not proposing any written commitments.

The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006). Policy LU 2.2: pursue a mix of land uses along major corridors and other locations identified on the future land use map. Policy ED 1.2: Encourage reuse of abandoned and underutilized land and structures. The future land use map identifies this area as Commercial. No other plan is in effect for this area. The 2200 block of Mishawaka Avenue is a commercial node with a mix of non-residential uses. The most desirable use is one that is compatible with the mixed-use character of this commercial corridor. Physical improvements and use of this site for a tattoo shop should not adversely affect surrounding property values. It is responsible growth and development to allow this property to develop into a business that will serve the community. This is a combined public hearing procedure, which includes a rezoning, a Special Exception Use, and two variances from the development standards. The Commission will forward the rezoning and the Special Exception Use to the Council with or without a recommendation and either approve or deny the variances. The Special Exception Use is for a tattoo parlor. A Special Exception Use may only be granted upon making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that: (1) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare. Tattoo facilities are licensed and certified through the Health Department to ensure they operate in a safe manner. (2) The proposed use will not injure or adversely affect the use of the adjacent area or property values therein. The property was previously used for non-residential uses. (3) The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein. The tattoo parlor will operate similarly to the other businesses found along Mishawaka Avenue. (4) The proposed use is compatible with the recommendations of the Comprehensive Plan. The comprehensive plan identifies this area for commercial development. The variances are as follows: 1. From the required twelve parking spaces to zero; and 2. From the required 500' separation from a religious use to 20'. State statutes and the South Bend Zoning Ordinance require that certain standards must be met before a variance or Special Exception Use can be approved. (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Tattoo facilities are licensed and certified through the Health Department to ensure they operate in a safe manner. Because there is on-street parking available with additional parking behind the building, the parking variance should not be injurious to the safety or general welfare of the community. (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. Improving the physical appearance of the façade will protect surrounding property values. The property was previously used for non-residential uses. (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The strict application would limit the ability for the site to be redeveloped as a tattoo parlor. On street parking is available, as well as non-descript parking in the rear of the building. Based on information available prior to the public hearing, the staff recommends that the rezoning petition and the Special Exception Use be sent to the Common Council with a favorable recommendation. The staff recommends approval of both variances. Allowing a tattoo parlor in this location will not be injurious to the overall retail character of Mishawaka Avenue or the adjacent residents. Rezoning to LB Local Business District is consistent with the character of the area.

We did receive a letter of support from Valerie Schey. She is the Council person for this district. She wanted to express her support of this project. She notes that she reached out to the River Park Neighborhood Association and has also garnered their support for this rezoning.

DAN BREWER: Is this the old Thomas Aquinas bookstore?

MATTHEW CHAPPUIES: I am not sure.

DAN BREWER: Did we hear anything from the church?

MATTHEW CHAPPUIES: No. We did not hear anything from the church. The property owner of the church was sent a letter but we did not hear anything from the church directly.

NATHAN RIVERS: I reside at 2212 Mishawaka Avenue. I am the owner (New Paris Development if the owner of record) of the property. I have a couple letters from area residents and then some pictures of the updates to the building that we did. I didn't bring enough for each of you. It was a vacant pet salon and before that it was a hair salon. From what I am aware of it has been empty for a very long time. I don't know exactly how long. What we are trying to do is just bring something new to the area that is going to bring a better vibe to the area and bring younger people into the area that want to experience River Park. All the businesses on the street are approving of it. I have a good relationship with the church. We have funding that has come in from the church we attend and two other local businesses in the area to help move the project forward. In turn we are trying to bring new people in and send our people out to their businesses as well to better the area.

ROBERT HAWLEY: Are you the only one that does the tattooing?

NATHAN RIVERS: I am just the owner/operator of the facility. Right now we have one artist contracted to work for us. We have to have Health Department license before we can get our license for the building, but we can't do that without the zoning. There is a three step process before we can get everyone approved to come in.

IN FAVOR

KEVIN STREBINGER: I reside at 3415 Pleasant Street. I am the treasurer for the River Park Neighborhood Association and I have to say that I commend you for what you do here. This is my first hearing and it's quite interesting. I have seen the inside of the building and what Nathan has done so far. Before even being able to open has been tremendous improvement. Demographics in River Park are very inclined to frequent a business like this. I have lots of friends in the area, and lots of people that have tattoos and are very interested in tattoos. Myself personally, I could take them or leave them. The people who like them would like to have a nice establishment to go to. River Park is a great neighborhood. We welcome any kind of business that is going to support our neighborhood. It is interesting that the amount of information that I have learned about tattoo's and tattoo artists in the last couple of weeks. They are required to have more certifications and more training than most restaurant managers. I spent 20 years in restaurant business and they have to go through a lot more just to do their work. I am in favor of Nathan and the people that are supporting him, the Church, the Indiana Whisky Company, in opening his shop in River Park and getting variances to make it happen.

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 John DeLee, being seconded by Robert Schrock and unanimously carried, a proposed ordinance of New Paris Development Co. LLC to zone from MU Mixed Use District to LB Local Business District; property located at 2212 Mishawaka Avenue, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Allowing a tattoo parlor in this location will not be injurious to the overall retail character of Mishawaka Avenue or the adjacent residents. Rezoning to LB Local Business District is consistent with the character of the area.

Upon a motion by John DeLee being seconded by Robert Schrock and unanimously carried the special exception use to allow for a tattoo, body piercing establishment is sent to the County Council with a FAVORABLE recommendation, subject to the rezoning being approved by the Common Council.

Upon a motion by John DeLee being seconded by Dan Brewer and unanimously carried, the following two variances: 1. from the required 12 parking spaces to 0; and 2. from the required 500' separation from a religious use to 20' were approved, subject to the rezoning being approved by the Common Council.

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Miscellaneous:

2. Executive Director's Report:

LARRY MAGLIOZZI: Angela is passing out a revised quarterly report. As Mr. King was looking at the numbers at the last meeting, we went back to the office and noticed that something wasn't quite right, so we corrected some data with the variances. Sometime in 2013 the decision was made between the former director and I that we were not really counting the variances properly. Initially we were counting agenda items. So, if there were ten agenda items, we were counting ten variances. In reality there is usually more than one variance per agenda item and each variance is a legitimate variance in its own right. We didn't make that change in the database really, so the only change in that report is the Board of Zoning Appeals numbers, everything else remains the same.

DAN BREWER: So it looks like we did more work.

KARL KING: The previous report showed there were three times as many variances this year as there were last year.

DAN BREWER: So we are getting lax.

KARL KING: That was the concern that there was something wrong with our code or that the BZA was just letting anything go. In fact, neither was true, it was just a difference in the way they were recorded.

LARRY MAGLIOZZI: That is still a lot of variances for both the City and the County which again points to the fact that structurally our ordinance is just not working the way it is supposed to work.

We are going to be ready to file the PUD draft ordinance for your July meeting for both the City and the County.

PHIL SUTTON: Would any of the two that we had today would have been true PUD's?

LARRY MAGLIOZZI: The ordinance has not changed yet.

PHIL SUTTON: Yes, I know but I am just saying, would they have been?

LARRY MAGLIOZZI: Definitely the second one, the old Target site.

The County has asked us to help them draft a chicken ordinance in the county.

PHIL SUTTON: I always get yelled at all the time. We have a lot of 4-H ers that are living outside the law and that is not what we are trying to teach them.

LARRY MAGLIOZZI: The staff will be preparing that at the request of the Council, which is a legitimate request from them. You will see that eventually. The timetable is their timetable.

PHIL SUTTON: It is needed. I am old enough to have had chickens in town and I don't know why we got rid of them but there was probably a good reason.

3. Minutes and Expenditures:

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

After due consideration, the following action was taken:

Upon a motion by Robert Hawley being seconded by Robert Schrock and unanimously carried, the minutes from the April 21, 2015 meeting of the Area Plan Commission were approved.

B. Approval of the expenditures from April 21, 2015 through May 18, 2015

Menards/Mishawaka - \$200.00; South Bend Tribune - \$70.53; Tiger Direct \$13.78; and Wex Bank - \$13.38.

After due consideration, the following action was taken:

Upon a motion by Robert Hawley being seconded by Phil Sutton and unanimously carried, the expenditures from April 21, 2015 through May 18, 2015 were approved.

4. Adjournment: 5:18 p.m.

KARL G. KING,
PRESIDENT OF THE COMMISSION

ATTEST:

LAWRENCE MAGLIOZZI,
SECRETARY OF THE COMMISSION