

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

**MINUTES**

Tuesday, February 16, 2016  
3:30 p.m.

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

**MEMBERS PRESENT:**

Daniel Brewer, Adam DeVon, John  
DeLee, Karen Iovino, Matthew Peterson, Jordan  
Richardson, Elizabeth Maradik, Gerry  
Phipps, Debra Davis, Phil Sutton, Jerry  
Thacker

**MEMBERS ABSENT:**

Steve Vojtko, Oliver Davis, Robert Hawley, John  
R. McNamara

**ALSO PRESENT:**

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

**DAN BREWER:** I would like to introduce our new APC Member, Debra Davis, representing the Town of Osceola.

We also have a new staff member, Keith Chapman.

**LARRY MAGLIOZZI:** Keith Chapman is our new planner. He started January 25<sup>th</sup>. He is from Michigan. He will be sharing Subdivision and Rezoning responsibilities.

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

**1. REZONINGS:**

- A. A proposed ordinance of Corvillia, Inc. to zone from LI Light Industrial District to MU Mixed Use District, property located at 3620 Deahl Court, City of South Bend – APC #2772-16

**MATTHEW CHAPPUIES:** The petitioner is requesting a zone change from LI Light Industrial District to MU Mixed Use District. On site is an existing institutional building. To the north are industrial buildings zoned LI Light Industrial District. To the east is a retail store zoned CB Community Business District. To the south is a truck sales lot and an industrial building zoned LI Light Industrial District. To the west is a manufacturing facility zoned LI Light Industrial District. The MU Mixed Use District is established to promote the development of the 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. On this 17.19-acre site, only the southeast corner is developed. The existing 12,348 square foot building is being internally retrofitted to accommodate an adult day center and offices. The existing parking area provides 59 spaces and is screened from adjacent properties by existing mature vegetation. A future 2,400 square foot maintenance building is proposed, along with an expansion

to an existing pavilion on the east side of the site. No other site modifications are proposed. This property has been zoned industrial since it was annexed into the city in 1990. This area was rezoned from residential to manufacturing in 1985 to accommodate an industrial park. Deahl Court has two lanes and ends in a cul-de-sac in front of this property. This site will continue to be served by municipal sewer and water. County Surveyor and the Department of Community Investment recommend approval. City Engineer recommends approval, subject to the approval of a drainage plan. IDEM has not yet made comment. The petitioner is not proposing any written commitments. This petition is consistent with City Plan, South Bend Comprehensive Plan (November, 2006); Policy PF 7.3.3: Encourage the establishment of health and wellness centers. The future land use map identifies this area as light industrial. There are no other plans in effect for this area. Cleveland Road, east of the interchange with the US-31 Bypass has developed to serve predominately industrial and office users. The most desirable use for this property is one compatible with the office and industrial uses in the area. Surrounding industrial and heavy commercial properties should not be adversely impacted by the zoning change. It is responsible growth and development to allow a suitable re-adaptation of an industrial building that will not impact the use of adjacent properties. The staff has no additional comments. Based on information available prior to the public hearing, staff recommends this petition be sent to the Common Council with a favorable recommendation. Zoning this secluded and heavily-wooded parcel to allow an adult day care center or other permissible uses within the MU Mixed Use District will allow the site to be utilized to a greater potential without impacting adjacent properties.

GREG KIL: I am with Kil Architecture. Offices located at 1126 Lincolnway East. With me here today is Rick Thompson, Executive Director of Corvillia. As the staff indicated, the property was a recently used as the Girl Scout Administrative Offices for Singing Sands. They didn't like their area because it didn't have the visibility that they were looking for, and I think the size of the building was a little larger than what they needed. For the Corvillia use this seemed to be a really good fit. One note to clarify is the offices are planned for the northern half of the building and then the southern half is planned for the adult day care use. One of the things that we found out after looking at the zoning classification was the Light Industrial District does not have a fit for adult day care. Looking at the rest of the ordinance, there is no really good fit for adult day care in the ordinance. So, in talking with the Director and staff the recommendation was to pursue a mixed use zoning classification. That seemed to be the best fit. One of the things that we understand, in terms of the clients that will be using the adult day care side, is that they would come for the day between 8:00 and 9:30 a.m. They spend the day doing various activities that would range from physical activities such as dance or exercise, but also other activities in group sessions, crafts and going outdoors. There is a patio in the back and some areas that they could walk around. As staff noted, the landscaping around the perimeter of the building is fairly mature. We think that the use is compatible with the surrounding area. There is not any heavy traffic that is anticipated. Folks would be staying for the day and then going home at the end of the day. The building has an open area in the middle portion of that southern half with some office and breakout rooms. It really works well with the adult day use where there would be a hand full of staff. Mr. Thompson could talk a little about the staffing. There is no basement and no stairs really. The plans call for, with your approval, adding some restrooms and support space that would provide the staff to deal with the toilet needs and washing needs of the residents. Probably about 30% of the clients have some mobility issues, whether it is a wheelchair, walker or crutches. The open concept for the layout seemed to be a really good fit. That is why we are here today to present this petition.

RICK THOMPSON: I am CEO of Corvillia, Inc. Corvillia has been around since 1959. We have

entered into a phase of growth. About a year ago all we had were group homes, four group homes serving people with intellectual and developmental disabilities. This last July we started in a new program of employment services where we assist individuals to go out and find jobs in the community and we help them maintain those jobs. As we have grown, we have outgrown our current location so we started looking and found this building. It seemed to be the most move-in ready that we found. It really serves our needs well. As I said, intellectual and developmental disabilities are who we serve. Greg did a pretty good job describing the type of clients that we serve: mobility issues, those who aren't in the workforce currently. We are tasked with providing a meaningful day for the individuals that we serve. We propose to use this building to help us along with that goal. The type of activities, like Greg mentioned; we will be including doing some physical activities and crafts. We are also going to be offering, for those that are able, some vocational skill building that are age appropriate. All of our clients are adults. We do not serve children, so age appropriate activities that will allow them to again have that meaningful day. We propose to have 25 – 40 individuals that will be served out of this building. Early on, much closer to the 25 number. They will come from our current group homes. As time goes on we may open that up to other individuals who may be in need of the facility. To start out we will be at the 25.

JOHN DELEE: Will any of the residents stay overnight?

RICK THOMPSON: No. This is strictly days. Probably 9:00 a.m. is when they arrive and they will be gone by 4:00 p.m.

#### IN FAVOR

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

#### REMONSTRANCE

JOHN LOCHMONDY: I reside at 3610 Deahl Court. That is the truck dealership. I just want to make everyone aware that there about 100 heavy trucks that come in and out of our property every day. We are not opposed to this, but I think you need to know there is quite a bit of industrial activity in and out of our property on a daily basis. I guess a question I would have is are they going to arrive by van, or how are they going to arrive? We welcome them, but want them to be aware of the traffic that is in and out of there.

#### REBUTTAL

RICK THOMPSON: All of our clients will be arriving by bus. Each group home has their own bus. When I say bus, it is not a large school bus. It is a light transit bus. Once they are there we will have staff with them. The individuals that arrive and come to our services are staffed non-stop. While they are there in the building they will be staffed and if they leave the building they will have staff with them to address any safety concerns that might be there. The appealing thing about this location is the fact that

it was tucked away off the Court. It does provide a nice little area that is like a little sanctuary. That goes along with the safety concerns as well. That is one thing that we are required to make sure that we are taking care of is the safety of our clients.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Phil Sutton and unanimously carried, the proposed ordinance of Corvilla, Inc. to zone from LI Light Industrial District to MU Mixed Use District, property located at 3620 Deahl Court, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Zoning this secluded and heavily-wooded parcel to allow an adult day care center or other permissible uses within the MU Mixed Use District will allow the site to be utilized to a greater potential without impacting adjacent properties.

- B. A combined public hearing on a proposed ordinance of Kuert Concrete Inc. to zone from CB Community Business District to GI General Industrial District and seeking the following five variances: 1) From the required 30' front yard setback for outdoor storage to 0' along Terrace Avenue and to 5' along Lincolnway West; 2) From the required Type B: Partial Screening landscaping of outdoor storage to none; 3) From the required minimum 6' height of a required screening fence for outdoor storage to 4' on the south property line and to no fence on the west side of outdoor storage area; 4) From the required landscaping of required perimeter yards to none; and 5) From the maximum allowable sign surface area of 64 square feet for a monument sign to 78 square feet, property located at 3101-3113 Lincolnway West, City of South Bend - APC# 2773-16.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from CB Community Business District to GI General Industrial District, and seeking 5 variances from the development standards. On site is an outdoor display and storage area for concrete products. To the north is a concrete manufacturing facility zoned GI General Industrial District. To the east across Terrace Avenue is a vacant lot zoned MU Mixed Use District and single family homes zoned SF2 Single Family & Two Family District. To the south across Lincolnway West is an auto parts store zoned CB Community Business District. To the west across Bendix Drive is an auto parts store zoned CB Community Business District. The GI General Industrial District is established to provide for development of manufacturing and processing facilities or facilities which may require substantial amounts of outdoor storage or outdoor operations. Permitted uses in this district tend to generate heavy traffic and require extensive community facilities. Permitted uses in this district may require extensive amounts of outdoor storage or outdoor operations. The permitted uses provided for in this district should be separated from residential districts or low intensity commercial / mixed use districts by less intense industrial districts. This site consists of two lots, totaling 0.71 acres. Existing on site is an outdoor merchandise display area and parking owned by, and associated with, the larger property to the north. The site plan proposes a 6' high vinyl fence along Terrace Avenue. The fence along Lincolnway is proposed at a height of 6', from Terrace Avenue heading northwest for approximately 50', then steps down to a 4' for the remainder. A 78 square foot monument sign is proposed along Lincolnway West. No buildings or structures are proposed. This property has been zoned commercial since prior to 1999. Bendix Drive and Lincolnway West have four lanes with a center turn lane. This site does not propose to utilize sewer or water. County Surveyor, City Engineer, and the Department of Community Investment recommend approval. The petitioner is not proposing any written commitments. This petition is not consistent with the West Side Main Streets Revitalization Plan. However, this site is an extension of a long established use at this location. The future land use map identifies this area as a Mixed-Use Node. No other plans exist for this area. The intersection of Lincolnway West with Bendix Drive has developed as a commercial

node with a mixture of retail, service, and industrial uses. The most desirable use is one that enhances the aesthetic nature of Lincolnway West as a "gateway" into the city, while also providing economic and service benefits to the area. Due to the fact that there is already an existing concrete plant at this intersection, allowing it to be properly zoned should not negatively impact the surrounding property values. It is responsible growth and development to allow this site to develop as a buffer between the industrial use to the north and the other commercial uses along the corridor. This is a combined public hearing procedure, which includes a rezoning and 5 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 30' front yard setback for outdoor storage to 0' along Terrace Avenue and to 5' along Lincolnway West; 2) From the required Type B: Partial Screening landscaping of outdoor storage to none; 3) From the required minimum 6' height of a required screening fence for outdoor storage to 4' on the south property line and to no fence on the west side of outdoor storage area; 4) From the required landscaping of required perimeter yards to none; and 5) From the maximum allowable sign surface area of 64 square feet for a monument sign to 78 square feet. 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. -Public safety will not be impacted by the location of the fence within the established setbacks, since it will still be outside of all clear sight triangles. (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. -Installing a vinyl fence to screen the concrete materials will improve the appearance of the property from the street. If installed, landscaping along Lincolnway West will add to the appearance and help protect surrounding 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 strict application will limit this site's ability to continue functioning as a display and storage area for concrete products. While the use requires industrial zoning, the setbacks along Lincolnway are generally much less than required by code. The staff notes that any material being stored on the property may not extend higher than the lowest section of fence (4'). The staff would like to encourage the continuation of the 4' fence along the western portion of the storage area to provide better screening. The staff sees no practical difficulty which would limit the owner from installing perimeter trees along Lincolnway West, as required by the ordinance, and therefore recommends against that portion of variance 4. Based on information available prior to the public hearing, staff recommends that this rezoning petition be sent to the Common Council with a favorable recommendation. The staff recommends approval of the variances subject to installing the 4' fence along the west side of the outdoor storage area and providing perimeter landscaping on Lincolnway West. This rezoning will allow for the extension of an existing business. The addition of the fencing and a monument sign, along with the landscaping will increase the site's curb appeal and enhance and support the City's efforts to improve the Lincolnway West Corridor, a gateway into the city.

GERRY PHIPPS: The fence that you are suggesting that they add would be just west of the storage area and not to the west property line?

MATTHEW CHAPPUIES: Yes.

GERRY PHIPPS: The landscaping along Lincolnway...it looks like there is a railroad and a driveway there. Where would there be room to put any?

MATTHEW CHAPPUIES: So, it would be here (Pointing to the plat).

GERRY PHIPPS: Ok, so it is along Lincolnway and not along Bendix?

MATTHEW CHAPPUIES: Right.

GERRY PHIPPS: In the area where there is a lawn?

MATTHEW CHAPPUIES: We don't see any reason why they could not put in the required landscaping. It is one every forty foot or so.

GERRY PHIPPS: All the way along the frontage on Lincolnway?

MATTHEW CHAPPUIES: All the way from this point (Pointing to the powerpoint) to the corner here. It would amount to six trees. They will be able to put those in where the grassy area is now.

DAN BREWER: Have you conferred with the petitioner in the changes of the variance requests?

MATTHEW CHAPPUIES: We made it known to them. I will let them address it in their presentation.

BRAD WEBB: I am with Kuert Concrete, offices located at 3402 Lincolnway. I guess all of this arose from a grant that we received as part of the Westside Corridors program. Part of that was a decision to erect a fence in which we again applied for a zoning variance petition. After consulting with the staff they recommended that we actually withdraw that and petition for a rezoning of the property to GI. In doing that it kind of changed some of the ordinances from the Community Business that we had originally kind of planned for. In trying to remain in agreement with the grant, we then submitted these five variances here. To speak to the staff's point about the landscaping, we did have a landscaping plan as part of the grant agreement. It was submitted to the Area Plan Commission. That does include a couple of shade trees. There is an existing shade tree, and includes several other plants. I have a copy of that if need to be submitted today. I don't see any problem with installing the four-foot fence along the west side of the storage area as the Commission has suggested. We are just really trying to stay in line with our original agreement as part of the grant, looking to make that area look a little more appealing to retail traffic and, I think we all kind of on the same page, just trying to beautify that intersection a little bit.

JOHN DELEE: You have been in this area for years, is that correct?

BRAD WEBB: Correct, this is the original location and has been in business since 1927. The retail location probably came about in the 90's.

DAN BREWER: If I understand you correctly, what you said with regard to the staff's comments about the variance request is that you don't have a problem adding the four-foot fence on the west? I am sorry I mean the landscaping.

BRAD WEBB: I think we could certainly consider that. Currently we have three trees in that 200 feet of frontage. We would just be required to add three more. I don't think that would be a problem. That is not something that we had discussed. Our president who entered into the grant agreement is on vacation, so I have not had a chance to discuss that with him since I reviewed this document.

DAN BREWER: Do you think that this would change something in the grant request and then adversely affect your ability to get the grant?

BRAD WEBB: That is kind of our concern originally. I had not had any of those discussions with the members of the West Side Corridors program. I don't see why it would be much of a problem if we planted three or four trees more than what was in the grant. Obviously we would pay for that and not submit any additional costs.

#### IN FAVOR

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

#### REMONSTRANCE

DR. THOMAS J. HUDAK: I reside at 2805 Humboldt St. It is about 2 ½ blocks away from the property here. I am not exactly opposed, nor am I exactly in favor of the proposal here. I just have a couple comments. One is this corner you are talking about with railroad crossing and with the trucks entering, that is a pretty awful corner. Then you have trucks going into Lincolnway. You have trucks going into Bendix at the same time and there is usually a fairly heavy traffic jam there also. The fencing seems fine. People I have spoken with in the neighborhood are fine with the fencing. However, you might want to reconsider the height along Terrace there. That area is used as a bathroom by the local street people. I don't know if Kuert is aware of that or not.

BRAD WEBB: You said street people?

DR. THOMAS J. HUDAK: Well, street people, winos. That seems to be fairly regular. We would like landscaping. If that intersection is the gateway to South Bend we have quite a ways to go. It is a pretty ugly intersection there. We are curious about this sign, is this sign going to be similar to the sign that is on Bendix now or do you have something more elaborate? The big question is why do you need a zoning change to do these things? I guess this is coming from the Commission as opposed to Kuert. Can't those variances be done without a zoning change? Once you change the zone, you have a lot of doors that are closed and other open later and there is no recourse to handle whatever problems may arise from those closed doors.

#### REBUTTAL

BRAD WEBB: We do have a rendering of what that intersection will look like after the fence and landscaping is installed. I would be happy to show to whomever would like to see it. I also have a rendering of the sign as well. It is an electronic sign with a permanent base. Again you are welcome to see that. As far as the zoning and I will let the staff comment on that. I believe the outdoor storage was kind of the issue of it being zoned CB and in order to allow us to store our concrete products at that corner it had to be a general industrial zoning. If I am incorrect I would be more than happy to let the staff comment on that. I believe I covered most your questions.

DAN BREWER: Dr. Hudak did raise the question on why the rezoning was necessary.

ANGELA SMITH: The outdoor storage component is not allowed in the CB district. The current zoning limits storage to the percentage of primary structure on the site. In this case there is no primary structure on the site. There was really no way for us to just do outdoor storage. After checking with Chuck Bulot, the Building Commissioner, the overall use of the entire property is really an extension on

the larger business that is on the property. The appropriate action would be to rezone the entire property to function as one site as it actually does. Originally they had applied to the Board of Zoning Appeals for fence height and then discovered all these other issues. I will also make note that the landscape variance will not affect the grant that they are applying for. The grant simply covers the cost to help with improvements. I have been in communication with Mike Divita, who oversees that and he stated it would not impact the grant.

After due consideration the following action was taken:

Upon a motion by John DeLee, being seconded by Jerry Thacker and unanimously carried, a proposed ordinance of Kuert Concrete Inc. to zone from CB Community Business District to GI General Industrial District, property located at 3101-3113 Lincolnway West, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. This rezoning will allow for the extension of an existing business. The addition of the fencing and a monument sign, along with the landscaping will increase the site's curb appeal and enhance and support the City's efforts to improve the Lincolnway West Corridor, a gateway into the city.

Upon a motion by John DeLee, being seconded by Phil Sutton and unanimously carried, the following five variances: 1) From the required 30' front yard setback for outdoor storage to 0' along Terrace Avenue and to 5' along Lincolnway West; 2) From the required Type B: Partial Screening landscaping of outdoor storage to none; 3) From the required minimum 6' height of a required screening fence for outdoor storage to 4' on the south property line and to no fence on the west side of outdoor storage area, subject to installing the 4' fence along the west side of the outdoor storage area; 4) From the required landscaping of required perimeter yards to none; subject to providing Type A perimeter landscaping on Lincolnway West and 5) From the maximum allowable sign surface area of 64 square feet for a monument sign to 78 square feet were approved subject to the rezoning being approved by the Common Council.

## 2. Appeals:

LARRY MAGLIOZZI: You don't see these very often. The Plat Committee handles the approvals of subdivisions. This one happens to be a Primary Subdivision that was appealed. This is treated as a brand new hearing.

- A. An appeal of Halstead Hickory Road Major Subdivision to be located on the east side of Hickory Road approximately 2,000 feet north of Cleveland Road, St. Joseph County – AS TABLED – APC #6792-15-P

MATTHEW CHAPPUIES: This Major Primary subdivision is located on the east side of Hickory Road approximately 2,000 feet north of Cleveland Road, St. Joseph County. This subdivision will consist of 2 building lots. The total area is for this Major subdivision is 7.13 acres. This property is zoned "R" Single Family District. A check of the Agency's maps indicates that no environmental hazard areas or wetlands are present. This property is not located in a floodplain. The Drainage plan was waived by the County Engineer on October 30, 2015. The rights-of-way are correct as shown. The County Surveyor and County Health Department recommend approval. The County Engineer recommends approval subject

to constructing a roadside drainage swale along Hickory Road. This subdivision went through Technical Review on November 19, 2015. Lot 1 is currently served by private well and septic system. If and when the private well fails, they shall connect to Municipal water. Lot 2 will be served by municipal water and private septic system. On December 8, 2015, an appeal to the Plat Committee's decision approving the primary plat was filed. The appeal was filed by John W. Linn, the adjacent property owner to the north. Mr. Linn contends that: "...the approval grants additional and unauthorized use of an easement across our property. The easement that is currently in place is for the benefit of the single existing lot. The proposed subdivision will add vehicular trips, thereby increasing wear and tear on the drive. Additionally, the increased use of our property creates additional liability for my wife and me, as the current owners of the property, which will result in damage/de-valuing of our property. We respectfully request that the access to this subdivision be removed from our property." Hickory Acres Minor Subdivision was recorded as a two-lot minor in June of 1985. At that point in time, the Subdivision Control Ordinance required a 30' "Future Roadway Easement" on Minor plats to allow for and accommodate for future development. Establishing a 5' non-access easement along the balance of the road frontage was common then as it is today. The Deed of Dedication states, in part: " The areas of ground designated on this plat and marked as "easements", are reserved for the uses as designated for the use of public utilities, and include but are not limited to the installation of water and sewer mains, poles, ducts, lines and wires, drainage facilities, and access for present or future development, subject at all times to the proper authorities and to the easement herein reserved." The Staff has reviewed this Subdivision and finds that if the following conditions are adhered to; it complies with the requirements for Primary Approval as specified by the St. Joseph County Subdivision Control Ordinance. The Staff therefore recommends that this Subdivision be granted Primary Approval, subject to the following: 1) Constructing a roadside swale along Hickory Road; 2) Removing the waiver note on the plat and Site Data Sheet; and 3) Adding a scale on the vicinity map.

BERNARD FEENEY: I am with Lang, Feeney & Associates with offices located at 715 S. Michigan Street. The subdivision that you see on the screen at the moment is not the subdivision that we have submitted. This, in fact, is a subdivision that was submitted and approved in 1984. The subdivision that you see shows a 30-foot roadway easment extending from Hickory Road into Lot 1. As stated by the staff, that future roadway easement was just exactly that, for a future roadway. In 1984 when this plat was approved, Judge Sharp agreed to the request of the Plan Commission and had his surveyor put that 30-foot roadway easement on the property. Immediately following the approval of the plat in 1985 Judge Sharp sold Lot 2 (the south lot) to John & Madeline Halstead. The Halsteads built a home in 1986 and lived there until such time they sold it to Howard and Lynn Halstead. The Halsteads are seeking approval of the plan that we have submitted so that they could build a home closer to Hickory Road as shown on the plan that is shown on the screen at the moment. Their home is currently about six to eight hundred feet back from Hickory Road. It uses the 30-foot driveway easement as its primary access to get back to that home. Lot 2 plans to use that as well, as shown on the drawing on the screen. There is a small easement that extends from the 30-foot roadway easement over to Lot 2 so that the Halsteads will be able to continue to use the driveway that exists there access to their new home. Once their new home is constructed, the existing home on Lot 1 will be sold. They will then reside in the constructed home.

DAN BREWER: Where is Hickory Road?

BERNARD FEENEY: Hickory Road is towards the left side of the screen. This is Hickory right here (Pointing to the powerpoint).

DAN BREWER: And the new house would be located on Lot 2?

BERNARD FEENEY: On this lot 2 (pointing to the powerpoint), yes.

DAN BREWER: The current structure is where?

BERNARD FEENEY: This is all in the context of the property that the Halsteads originally purchased and has been in their family since 1985, which was originally Lot 2 of the Hickory Road Minor Subdivision.

DAN BREWER: The easement that was there in 1984 is where on the map?

BERNARD FEENEY: In this exact area Mr. Brewer (Pointing to the powerpoint).

DAN BREWER: How far does it extend to the east?

BERNARD FEENEY: It only extends this far into the lot. The driveway enters in through here and swings to the south for the Halsteads access and is currently located completely on their property. It extends to the house roughly in this location (Pointing to the powerpoint). What the Halsteads are proposing is that the drive for the new home, which would be in this area right here (Pointing to the powerpoint) would extend from the existing driveway to the south and allow access on to Lot 2.

MITCH HEPPENHEIMER: Lot 1 is Sharp's. Lot 2 was the Hallstead's. Lot 2 is what they are trying to subdivide. They are not touching the old Lot 1. They are just doing Lot 2. Lot 1 is staying the same. What you have in front of you is the south part, which was Lot 2, now they are taking that and they are going to make Lot 1 which is the back part of the east side and Lot 2.

BERNARD FEENEY: The appellant, Mr. Linn lives on Lot 1 of the original Sharp's subdivision. Both of the lots were created approximately equal in area. Both of the lots are approximately 7.1 acres in size.

DAN BREWER: How does Mr. Linn get to his property?

BERNARD FEENEY: The very same driveway that the Halsteads use to access their home.

DAN BREWER: Then they would have to go north.

BERNARD FEENEY: Mr. Brewer, Mr. Linn lives in a house on Lot 1, so yes he would be going north off of that common driveway.

MITCH HEPPENHEIMER: Bernie, explain how they are using it right now.

BERNARD FEENEY: Mr. Linn's house is located here (Pointing to the powerpoint) and the Halstead's house is located approximately here (Pointing to the powerpoint). There is a single driveway located roughly in this area (pointing to the powerpoint). The driveway comes in and goes north to Mr. Linn's house. The driveway comes in across the property line onto the Halstead's property and then in a curving fashion, back to the Halstead's house.

MITCH HEPPENHEIMER: That is currently there?

BERNARD FEENEY: That is existing.

MITCH HEPPENHEIMER: Now, future?

BERNARD FEENEY: The driveway, again, comes in here off Hickory Road (Pointing to the powerpoint) and goes north to Mr. Linn's house back in S curve fashion to the Halstead's house. A new driveway would be constructed here going due south to the Halstead's new house.

MITCH HEPPENHEIMER: The house to the east is still using that.

BERNARD FEENEY: Correct.

GERRY PHIPPS: Bernie, the reason for this easement, I expect, is because in 1984 and also now, the County does not want to increase the number of driveway connections out to Hickory. They probably want the original driveway to be the access for both the original Lot 1, Lot 2 and now the 3<sup>rd</sup> one?

BERNARD FEENEY: Absolutely, Mr. Phipps. At the same time, the Plan Commission staff was very aware that a 10-acre piece of property in Clay Township or in Harris Township was very susceptible to further development. All of the minor subdivisions of this size and this general character were required to have a future roadway easement to protect, rather than promote, all kinds of access onto the County Roads.

LARRY MAGLIOZZI: Back around 1985 the future roadway easement was designed to limit multiple access points onto a road. This usually occurred in 2 lot subdivisions. It was put in there so that each future owner could further subdivide their property and the impression was that they do that through a dedicated street. Lot 1 essentially they would use that future roadway easement, pave it and improve it. Lot 2 could do the same thing. They could use that one access point. Essentially you have a major subdivision and two lots. That was really a way to try to limit the number of access points.

### IN FAVOR

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

### REMONSTRANCE

STEPHEN STUDER: I am with Kreig Devalt offices located at 4101 Edison Lakes Parkway, Mishawaka. We do not oppose the subdivision plat. What we oppose is the fact that the original easement lies entirely on Mr. & Mrs. Linn's property. I gave each of you a booklet, if you look at the first tab, this is really not a roadway, this is a driveway. You can look close and see Mr. Linn's house, which was Judge Sharp's house, on the far left here. Those of us who knew Judge Sharp could only wonder what he was thinking when he did this back in 1984-85. At the time, the Subdivision Control Ordinance required that a roadway easement be dedicated. Judge Sharp when he subdivided this obviously didn't have any objection. He subdivided this and sold a lot to the current owners, the Halsteads. It has worked fine, and our client has no issue with the way it worked for the last 32 years or so. It is a very cordial relationship. They take the trash down. They each drive it. They take turns plowing, etc. The concern however now, is that to put three parties on this driveway is too much. Three is a crowd. That is the concern we have. Not only would we have construction traffic that would come off here, but there are already two homes that use this private drive as it is now. Interestingly enough, the Subdivision Ordinance does not define a roadway. This is a roadway easement. Roadways are not

defined in the Subdivision Ordinance, driveways are. Roadways are actually defined as a highway, an open way or public way. The interesting thing about this as proposed, if you look at tab 2, to the extreme south. There is a dedicated roadway easement between Grape and the new lot according to the County Engineer the purpose of that is so that if they extend a roadway between Grape and Hickory, they would do it along that southern portion. If you look at my map, the dotted lines are mine which would tie into Hickory over here. They would have a roadway between Grape and Hickory. They won't need that roadway easement anymore and they said it was done 32 years ago. Again, we have no objection to the subdivision itself. What we do concern ourselves with is the fact that there is going to be three parties using this easement. We have spoken to the County Engineer and the County Engineer has indicated to us she would have no difficulty having continuous driveway on the lot immediate south of our driveway so they could either double the lots up there, or she indicated that she would work with the proposed owners of the development to find another way of access. She did not object to having another driveway. It still would be one access off Hickory, but it would be double wide and more convenient for people to utilize rather than three lots. You can imagine three families trying to use this small driveway coming in and out. There is nothing that says the current owners want to subdivide that lot. And there is nothing that says that our client might want to subdivide their lot into another lot. So all of sudden we have four and five people using a small driveway. That is not why it was created. It was created, I believe by Judge Sharp, to service his house and the one lot to the south of his which is the Halstead's. What we are asking for really is just there be in addition to the other recommendation made by the Staff, that the petitioner work with the County Engineer and bring this plat back for approval after talking and finding a better solution to this.

JOHN DELEE: Is that shown on tab three?

STEPHEN STUDER: Tab 3, that just shows what the deed says, which is a roadway easement. Because Judge Sharp was required to put that language in the deed when he conveyed it, because the Subdivision Ordinance required that language. Tab three just shows that is what it says. The easement lies entirely on Mr. & Mrs. Linn's property. It doesn't slide over to the second lot. Again, he has no objection of using it that way as long as he lives there. For two homes, it is ok, three homes would create a problem.

JOHN DELEE: To try to understand this, what you are saying is you think the driveway for the new house should be on Lot 1 rather than Lot 2?

STEPHEN STUDER: Yes. Lot 1 rather than Lot 2. That is correct.

JOHN DELEE: You are widening the entrance?

STEPHEN STUDER: Widening it or creating another entrance directly to the new home.

JOHN DELEE: So the County Engineer didn't have a problem with it, but we have a problem with the old way the Subdivision Ordinance was written? Where is the problem here?

LARRY MAGLIOZZI: When a plat is submitted, we check it against the Subdivision Ordinance. During that process we could negotiate access. When this was submitted, this was the way it was submitted.

JOHN DELEE: With a single entrance?

LARRY MAGLIOZZI: With a single entrance. These folks have a right to that access easement. Just like Lot 1, they have the right to it as well. This meets all of the requirements of the Subdivision Ordinance. There may be another way of doing an access. This is the way The developer of Lot 2 submitted it. That is the way we have to react to it. It meets the requirements. There could be a better way. You are not in a position to dictate where the access should go. Your decision is this, this meets or does not meet the requirements of the Ordinance. State Law doesn't give you a lot of latitude. That's why we have the recommendation the way it is now. The developer has an option. They could come back and submit a brand new plat, or revised the plat to show access somewhere else in reaction to what is heard today. We just go through the process then.

DAN BREWER: If another house was proposed for Lot 1, that would require another subdivision correct?

LARRY MAGLIOZZI: Yes.

GERRY PHIPPS: It would seem to me the major problem with the driveway, as it exists now, is it is only one lane wide. So, if someone was waiting to get out onto Hickory and someone wanted to turn into the driveway, there would be a bottle neck and so I would think the major concern to alleviate that is to widen this to two lanes. The existing easement was 25 feet wide, you could put a 20-foot driveway into that. Could we just recommend as part of the subdivision approval that the paved driveway be widened to 20 feet wide so that one car could be going out while another was coming in? All within the existing 25-foot easement?

LARRY MAGLIOZZI: The current easement is really not on the property being subdivided. You can't make a decision on a piece of parcel that is not part of this plat.

GERRY PHIPPS: But if we can make a recommendation that a highway ditch be improved, I would think we could make the recommendation of the condition that the existing paved entrance would be widened. There would be three houses using that drive as opposed to two.

LARRY MAGLIOZZI: The highway ditch is in front of the current subdivision that is being proposed. The current driveway is off site.

GERRY PHIPPS: Seems to me that if the easement serves the proposed subdivision then that would become reasonable. It seems it could be part of the subdivision since it is required for easement to access to it, so we could put a condition on the width of the pavement.

MITCH HEPPENHEIMER: That may not be an acceptable solution.

STEPHEN STUDER: The staff has already recommended certain conditions for approval of this plat. We are just asking for one more condition. The problem with this is that Mr. & Mrs. Linn's property is the burden property here. They are the ones who have the driveway on their property. They don't mind sharing it. I don't think we should burden Mr. Linn again to have them do something to their property. The people that are benefiting are the people that own Lot 2. All we are suggesting is if they are benefiting from the sale of the property, they should share some of the burden of having that driveway on their property. I don't think it is fair to ask Mr. & Mrs. Linn to do anything on the property. This was done 30 years ago because it was a roadway easement. The idea was to extend that roadway all the way

through the property to Grape Road at some point in time. It isn't going to happen, otherwise the County Engineer would have requested a new road way easement. So, again it was 32 years ago. Now it is used as a driveway and all we are saying is two people using the driveway works fine, three does not. We are suggesting that another condition of the plat be that they provide direct access to the new lot. I think that is a simple recommendation.

GERRY PHIPPS: You said the County Engineer would agree to another driveway then?

STEPHEN STUDER: She said yes. I talked to her and she would be agreeable to having another driveway. I think it is still 2,000 feet from Cleveland Road. There are no sight issues. If Mr. Linn is to ever develop his property, he knows he has to use existing drive to serve if he ever subdivided. I don't know that is in the cards right now.

JOHN DELEE: When the original subdivision was put in, was there a requirement for a certain size entrance?

MITCH HEPPENHEIMER: It was according to the Ordinance.

JOHN DELEE: Twelve foot was ok at that time?

ANGELA SMITH: It is a thirty-foot future roadway easement.

LARRY MAGLIOZZI: It is the standard width of a fully developed road.

JOHN DELEE: The 30 foot wasn't all on the Linn property was it?

LARRY MAGLIOZZI: The 30 foot is entirely on Mr. Linn's property.

#### REBUTTAL

BERNARD FEENEY: Just to recount briefly, in June of 1985 Judge Sharp recorded the plat. I in June of 1985 he sold Lot 2 to John and Madeline Halstead. In 1986 a home was built on Lot 2. In July of 2012 Howard and Lynn bought Lot 2 from John and Madeline. In December of 2012 John Linn purchased Lot 1. In March of 2015 John Linn filed a three lot subdivision of the property that he purchased. A three lot subdivision that would have used this access, the access in question, as access or at least for one of the lots in that subdivision. That subdivision has, at this time, been placed on indefinite table and could be reactivated at any time. Mr. Linn's subdivision is a three lot subdivision creating two additional buildable parcels that could be placed on his property each. The existing house would exist on a .6 acre parcel a .6 acre parcel would be created up to the north end of Mr. Linn's property and the largest lot, a 6.1 acre lot would remain for what I presume would be a new home as well. These three lots seem to be Mr. Linn saying what I would like to have, but I don't want the Halsteads to use it. The Halstead's are taking it in that exact fashion. They are quite upset about the appeal that Mr. Linn has filed. Mr. & Mrs. Halstead are using the access reasonably. They are in fact conducting their lives quite handily. There is no antipathy towards the Linns but there is a very disturbed feeling that Mr. & Mrs. Linn want what they want but would try and prevent the Halsteads from getting the very same thing. The Halsteads are only asking for a single access off of the 30-foot easement that is there. That was there the day John Linn bought his property, that John Linn could see was being used by the Halsteads as well. So what we are asking for is our ability to use that access easement as well.

DAN BREWER: What you handed out was never an approved plat?

BERNARD FEENEY: It is tabled indefinitely before the Plat Committee, which means it is in limbo. It was submitted. It has some requirements that must be met before its approval. The single requirement that must be met before approval is the same ditch along Hickory Road that we are required to put in.

MITCH HEPPENHEIMER: Now this is lot 1. This was submitted in March of 2015.

JOHN DELEE: But not approved?

MITCH HEPPENHEIMER: It was tabled.

DAN BREWER: So as far as we are concerned that is not an issue here.

MITCH HEPPENHEIMER: You have three choices. One is you could approve the subdivision. Two you can table it and allow them another attempt to work it out. Three you could deny it. If you deny it you have to state a reason it does not meet the criteria of the Ordinance.

ADAM DEVON: To me it seems like a discrepancy of sharing the property. I think they should split the easement down the middle of the property line but I think it should be tabled and let the County Engineer handle it.

DAN BREWER: We have three choices. We can approve with the requirements by the staff, table or deny.

ANGELA SMITH: Those requirements are all things required by the Subdivision Control Ordinance.

GERRY PHIPPS: Bernie, would the Halsteads be willing to widen the paved driveway on Mr. Linn's property 20 feet?

BERNARD FEENEY: Actually Mr. Phipps, the Halsteads would be willing to entertain a motion to table at this time, until such time as we can get something definitive from the County Engineer.

After due consideration, the following action was taken:

Upon a motion by Adam DeVon, being seconded by John DeLee and unanimously carried, Halstead Hickory Road Major Subdivision is tabled until the March 15, 2016 meeting of the Area Plan Commission.

#### ITEMS NOT REQUIRING A PUBLIC HEARING

1. Miscellaneous:

No items for consideration

2. Executive Director's Report:

LARRY MAGLIOZZI: Last month we did hand out the Annual Report. We had a rather rough meeting last month so I didn't have a chance to go over it. If you have any questions on it, feel free to give me a ring, or ask now.

I passed out some literature on the Shirley Hintz Land Trust. I believe I talked about this a few months ago. They purchased a piece of property off of U.S. 20. They are a Land Trust that would like to move into our County. What they do is acquire pieces of undeveloped property and they are looking for an Advisory Council to set up in St. Joseph County. If you are interested in serving on the Advisory Council, please get in touch with me. I will forward to the Executive Director and he could explain to you what the responsibilities will be. He tells me, in general, they meet at least once a year to talk over the direction he wants to take the following year as to what properties to acquire. If you are not interested, please return the brochures so I can re-distribute them to others.

DAN BREWER: Is it trails and...

LARRY MAGLIOZZI: Yes some are active, such as trails.

PHIL SUTTON: This particular spot I think has some endangered species and things like that.

LARRY MAGLIOZZI: There was some type of unique bog as well. I don't remember what it was though.

3. Minutes and Expenditures:

- A. Approval of the minutes from the January 19, 2016 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by Adam DeVon, being seconded by John DeLee and unanimously carried, the minutes from the January 19, 2016 meeting of the Area Plan Commission were approved.

- B. Approval of the expenditures from January 20 through February 16, 2016

After due consideration, the following action was taken:

Upon a motion by Adam DeVon, being seconded by John DeLee and unanimously carried, the expenditures from January 20 through February 16, 2016 were approved.

4. Adjournment: 4:55 p.m.

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DANIEL H. BREWER  
PRESIDENT OF THE COMMISSION

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LAWRENCE P. MAGLIOZZI  
SECRETARY OF THE COMMISSION