

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

**MINUTES**

Tuesday, October 18, 2016  
3:30 p.m.

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

**MEMBERS PRESENT:**

Dan Brewer, John  
DeLee, Adam DeVon, Robert Hawley,  
Elizabeth Maradik, John R.  
McNamara, Matthew Peterson, Gerry  
Phipps, Jordan Richardson, Phil Sutton,  
Steve Vojtko

**MEMBERS ABSENT:**

Debra Davis, Oliver Davis, Karen Iovino, Dr.  
Jerry Thacker

**ALSO PRESENT:**

Larry Magliozzi, Keith Chapman, Angela M.  
Smith, Jennifer S. Parcell, Staff; Mitch  
Heppenheimer, Counsel

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

**1. REZONINGS:**

- A. A combined public hearing on a proposed ordinance of Family Video Movie Club, Inc. to zone from B: Business District and C: Commercial District to C: Commercial District, and seeking the following variances 1) from the required perimeter landscaping to none; 2) from the required off street parking area screening to none; 3) from the required 180 parking spaces to 65; and 4) from the required foundation landscaping to none, property located at 51522 State Road 933, St. Joseph County - APC# 2796-16.

**KEITH CHAPMAN:** The petitioner is requesting a zone change from B: Business District and C: Commercial District to C: Commercial District and seeking four variances from the development standards. On site is an existing building and parking lot. To the north across Auten Road is a gas station zoned C: Commercial District. To the east are single family homes zoned R: Single Family District. To the south is a business zoned B: Business District. To the west across State Road 933 is a gas station and automobile repair shop zoned C: Commercial District. The C: Commercial District is established to provide a location for those retail sales and service functions whose operations are typically characterized by: outdoor display or sales of merchandise; major repair of motor vehicles; commercial amusement and recreational activities; or, activities or operations conducted in structures which are not completely enclosed. The types of uses found in the C: Commercial District are often brightly lighted and noisy. Permitted uses contained in this district are such that this district may be used to form a grouping of similar uses along certain portions of major commercial thoroughfares. Special attention should be paid to buffering whenever this district is located adjacent to any residential district or residential uses. On site is an existing 9,468 sq. ft. commercial building located on 1.26 acres. The site has an existing parking lot with 65 spaces. There are currently five small landscape beds on the property. This property was rezoned to Commercial in 1974. This property was split zoned to Commercial and Business in 1984, subject to a site development plan. Auten Road has two lanes. State Road 933 has four lanes and a center turn lane. This site is served by water and sewer. INDOT commented that if the use is being changed or a drive is being moved then a driveway permit will be required and the traffic engineers will look it over for approval. The County Engineer commented the following items need to be addressed: 1) Drainage calculation errors. The following 'C-values' shall be used: a. Building = 1.00 b. Concrete = 1.00 c. Asphalt = 0.99 d. Grass = 0.20 2) All runoff for a 100 year, 24-hour storm event shall be stored on

site; 3) Pavement data legend shows concrete approaches. Are the approaches to be reconstructed? If not remove from the legend; and 4) Check all hatching for legend items. None coincide with what's being shown. The County Health Department commented that the petitioner must gain approval from ISDH to complete the proposed plan. 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 2: Objective C: Develop quality business areas to meet the retail and service needs of the planning area. The future land use map makes no specific recommendation for this area. There are no other plans in effect for this area. State Road 933 is a heavily traveled commercial and business corridor that abuts residential neighborhoods. The most desirable use is commercial. With adequate landscape screening, adjacent property values should not be negatively affected. It is responsible growth and development to allow an existing business to continue and expand its operations, within a well-established commercial area. The staff has no additional comments. Based on information available prior to the public hearing, the staff recommends that the rezoning petition be sent to the County Council with a favorable recommendation. The staff recommends approval of variances three and four. The staff recommends denial of variances one and two. Staff would support a reduction in the landscaping required along the east if a 6' privacy fence is installed. Rezoning this site will allow for the expansion of an existing business within the same building. By providing landscape screening, the negative impact placed on surrounding properties will be minimized.

JOHN MCNAMARA: Are we that far off with requirements that we require 180 parking spaces and they only have 65?

KEITH CHAPMAN: Typically, this would be more in line with a Planet Fitness type facility where it is larger scale than this one. This would obviously not have as many users as a facility that large.

JOHN MCNAMARA: You ought to go into politics. Are we really that far off through?

ANGELA SMITH: Yes, we are that far off. We have been talking about this as one of the uses to take a look at. These are based on square footage of open space.

GERRY PHIPPS: But you won't be that far off for other commercial uses, but for this particular one you are.

ANGELA SMITH: For these kinds of gyms, where you can only fit so much equipment in there. We do have other instances, larger gyms, that have to go to the Area Board of Zoning Appeals (ABZA).

BRENT CONLEY: I am the Regional Vice President with Highland Ventures. Highland Ventures owns the real estate arm of our company. We also own Family Video. The StayFit 24 is a lower density use facility. We have been open since May 2008. That is the very first gym we opened in the Midwest. We have 34 pieces of equipment in the gym today. With the proposed expansion, we are essentially requesting an opportunity to move an interior dividing wall fifteen hundred square feet into the existing Family Video. By doing that we would essentially offer 41 pieces of equipment with the new change, with the new design. I believe I submitted the 2-D overview of what that gym would look like. Essentially we are adding seven pieces of equipment. When we look at the parking, right now we have 65 parking spaces. The video store has been in business since 2003. To prepare for today's presentation, I went back and I looked at all of our activity in the video store and looked at all of our activity in the gym. I am going to bet it is to no one's surprise to hear that the video business is starting to slow down. When we look at any one hour in the video store the most that we have ever had in terms of customers over the course of the entire year was sixteen patrons. That actually was a Friday and Saturday. Our peak business for video is Friday and Saturday. On the flip side, the most people that we have had inside our gym was sixteen people. That is also peak time, and that is Monday and Tuesday evening. When we

look at the complimentary business's being that we own both of them and we have the commercial property, we felt that there was not any negative consequence to the parking requirement for 65. To try to achieve 180 spots, there was no way that either of our business would warrant that kind of foot traffic that would come in. One of the questions I have is how was our building split zoned? I was before this board one other time, back in 2009. We were debating on the expansion at that point and I am pretty certain that when we presented to the board the entire building was zoned C Commercial, I may be wrong, but that is my memory. The reason why we are asking for the variances on the landscaping is that we are obviously in business right now. StayFit 24 has been open since 2008. The video store has been there since 2003. I am just here to ask if we can move the dividing wall 1,500 square feet and minimize any expenses that I have. I understand the board's comments and respect those. I do want to point out that the rear of our property, we do have a six-foot-tall board on board fence that is separating our commercial properties to the residential property behind us currently. I would just ask that we would be able to maintain that same board on board fence. I am not looking to grossly expand the cost of a project for two existing businesses.

JOHN DELEE: Which variance was the fence?

BRENT CONLEY: Perimeter landscaping. Was that number 1?

ANGELA SMITH: Yes.

JOHN DELEE: That calls for bushes, etc., rather than a fence?

ANGELA SMITH: It calls for a staggered double row of evergreens. It is abutting residential, so in the staff comments it stated we would support a six-foot privacy fence. The other perimeter landscaping that is required is the two front yards, along Auten and along 933, require one shade tree every 40 feet.

#### 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.

STEVE VOJTKO: Can you clarify again variance one and two? Looks like on the east side there is not a lot of room there, so you are saying a fence would be sufficient?

ANGELA SMITH: The perimeter that they require along the west would be one shade tree every 40 feet. They are not required anything on the south. Along the east they are required a residential buffer yard and increased landscaping, which includes a double row of staggered evergreens. The staff, recognizing that they don't have enough space for that, we are obviously not going to make them dig up and move the building. They indicated that they have a board on board fence. I don't believe it extends the full length of the property, so we would like to see it extend the full length of the property and provide the proper screening between them and the residential properties.

STEVE VOJTKO: Would this be the proper time for them commit to that then?

ANGELA SMITH: If they agree to that.

STEVE VOJTKO: The other perimeter landscaping would be the trees every 40 foot?

ANGELA SMITH: Along Auten and State Road 933.

ADAM DEVON: This is taking a step back a little bit. If he is not changing his businesses, why is he even getting a rezoning?

ANGELA SMITH: There is a change in the businesses. The fitness center is not allowed in the B: Business District and the property is split zoned. We are not sure how it started or what happened, but it was operating under that classification before. When they applied for their remodeling permit, the Building Department identified they were not in the proper zoning classification. The other portion of the site was tied to a site development plan. So this would remove that requirement as well.

GERRY PHIPPS: How would you suggest we handle that change from landscaping to a fence along the east property line? Do we just approve that variance with that substitution? Or we can deny the variance but include the fence is allowed?

ANGELA SMITH: You could deny the variance for the north and west frontages and approve the variances along the east property line, subject to installing a six-foot privacy fence.

DAN BREWER: Do you have any objection to that Mr. Conley?

BRENT CONLEY: I just want to point something out, I might be confused with what the Board is suggesting. On the east property line there is a board on board six-foot fence to the north of our building. There is currently an existing fence their right now. There is also a board on board fence to the south to the dumpster enclosure. The challenge that we have is at the rear of our building right to the east, we have all of our HVAC units that are immediately behind our property. Essentially I don't have any space for any type of landscaping. There is a chain link fence that I believe is the property owners fence and not ours, we don't maintain that. I just want to make sure I understand that clearly.

ANGELA SMITH: I think you are understanding it correctly, there is currently some board on board fence there. The chain link fence is probably not owned by Family Video but our recommendation would be that a board on board fence would stretch the entire length and may require replacing some fence that may or may not be on their property.

BRENT CONLEY: Sure. I am in business now; these are existing conditions. I will be more than happy to plant materials in the existing planning beds in front of the property. The challenge that I am going to have, again, is the additional expense. It has been there for years, since 2003. As far as I can tell we have a pretty good relationship with our residential neighbors to the east. I have not had any complaints with the fence on our property.

LARRY MAGLIOZZI: You said you have your HVAC units behind the building?

BRENT CONLEY: We do.

LARRY MAGLIOZZI: Do you know how much room is between the property line and the units? Do you have to walk on the neighbor's property to service those units?

BRENT CONLEY: No. But, it is probably within a foot. We were just walking that space back there this afternoon. I don't have it steaked out, but it is tight.

ROBERT HAWLEY: Are there utilities, like electric back there?

BRENT CONLEY: I don't know if there are utilities in the back. I would have a tough time believing that we would be able to put our units on top of an easement.

ROBERT HAWLEY: That is my point, I wondered if that is an easement area.

ADAM DEVON: Part of that building is zoned C anyway, so, was it not in compliance back then when it was zoned?

BRENT CONLEY: In 2009, I didn't have this issue. The zoning was not an issue.

ADAM DEVON: Looking at the site plan, essentially half that building is zoned commercial, correct?

DAN BREWER: You would not have that issue if the northern part was...

ADAM DEVON: That is what I am thinking.

BRENT CONLEY: My opinion is that the split zoning didn't exist back in 2009. I think this came up since then.

DAN BREWER: Is there any increase of use in the mechanicals that are on that side? Are they going to get louder, are they going to get more....

BRENT CONLEY: Essentially, if you look at our HVAC, right now the unit that is servicing the video store would essentially serve the fitness center, so we are just going to move that demising wall to the north.

JOHN DELEE: Would you go along with putting up perimeter landscaping on the north and west?

BRENT CONLEY: I will put planting materials every 40 feet yes.

ANGELA SMITH: The parking screening requirement is a hedge row to screen the parking spaces essentially. Again, I am not sure why that was not required in 2009. The new ordinance was approved in 2005. The parking spaces would be screened with a two-foot hedge row basically.

DAN BREWER: Where is that on the map?

ANGELA SMITH: The landscape would require a hedge row. One shrub 24 inches on center.

DAN BREWER: Mr. Conley, you said you were willing to do that?

BRENT CONLEY: I apologize, not that. I would be willing to do a tree every 40 feet. That complies with variance number 1. This is somewhat difficult for us for a couple of reasons and I don't want to be a broken record, but if we decide not to expand the gym, existing conditions are existing conditions. When I look at the corners and the intersection, it is my opinion and I feel that we have a much better pleasing commercial property than the other properties that are on that same intersection. There is not any of the other businesses that are through this corridor that have an existing hedge row as presented. I would honestly prefer not to incur the expense or the maintenance of those items.

JOHN MCNAMARA: The only thing I want to say is that I have been out there and this is probably the most attractive corner out there already. I understand what the requirements are, but if we are willing to

throw out 115 parking places why don't we just give them a variance on the landscaping. He has a gas station across the street.

JOHN DELEE: That is what the motion says.

JOHN MCNAMARA: But I am saying grant...

JOHN DELEE: The thing is he has to put the trees in front.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Phil Sutton and unanimously carried, a proposed ordinance of Family Video Movie Club, Inc. to zone from B: Business District and C: Commercial District to C: Commercial District, property located at 51522 State Road 933, St. Joseph County, is sent to the County Council with a FAVORABLE recommendation. Rezoning this site will allow for the expansion of an existing business within the same building. By providing landscape screening, the negative impact placed on surrounding properties will be minimized.

Upon a motion by John DeLee, being seconded by Adam Devon and carried, the variance(s) 1) from the required perimeter landscaping to none, subject to providing the required perimeter landscaping on the North and West; 2) from the required off-street parking area screening to none; 3) from the required 180 parking spaces to 65; and 4) from the required foundation landscaping to none, property located at 51522 State Road 933, St. Joseph County, were\was approved subject to the rezoning being approved by the County Council.

JOHN MCNAMARA: Yes, that is what you said?

JOHN DELEE: Yes.

JOHN MCNAMARA: I am saying that I don't think that is even necessary, but...

STEVE VOJTKO: What about the fence in the back then, are we just going to keep that continuous then?

MITCH HEPPENHEIMER: So the motion is to approve variance #2, 3, and 4 and for #1 the motion is to....

JOHN DELEE: Deny the north and the west

ANGELA SMITH: And approve the east and south.

JOHN MCNAMARA: Deny the variance on the north and west?

JOHN DELEE: Yes.

MITCH HEPPENHEIMER: But approve it on the....

JOHN DELEE: South and east.

ANGELA SMITH: It is only needed on the east.

- B. A proposed ordinance of Bettie Jo Williams to zone from SF2 Single Family & Two Family District to MU Mixed Use District, property located at 1037 Elmer Street, City of South Bend - APC# 2797-16.

KEITH CHAPMAN: The petitioner is requesting a zone change from SF2 Single Family & Two Family District to MU Mixed Use District and three variances from the development standards. On site is vacant land. To the north is a single family residence zoned SF2 Single Family and Two Family District. To the east across Elmer Street are single family residences zoned SF2 Single Family and Two Family District. To the south are businesses zoned MU Mixed Use District. To the west are businesses zoned MU Mixed Use District. The MU Mixed Use District is established to promote the development of the 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 site there is a proposed 2,400 sq. ft. accessory building with a height of 21.5'. The proposed building will serve the adjacent daycare facility located to the south of the site. This property was zoned residential prior to 2006. Elmer Street has two lanes with on street parking. This site will be served by municipal water and sewer. Department of Community Investment supports the concept of the Bettie Jo Williams request to rezone 1037 Elmer Street from SF2 to MU. The proposed rezoning would allow the daycare business to improve its operations and would be in keeping with the spirit of the West Side Main Streets Plan. Without having the benefit of project specifics, DCI would recommend that:

- 1) The garage be located toward the rear (west end) of the lot and not forward of the front building line of the houses to the north along Elmer (approximately 20-25'). DCI would be supportive of a variance from the MU maximum setback to accomplish this siting;
- 2) The garage doors be oriented to the south or west;
- 3) If the garage is placed at or near the Elmer Street building line, architectural finishes and foundation landscaping should be added to the Elmer Street façade; and
- 4) The rezoning parcel should be integrated with the business parcels to the south to ensure proper access and functionality, to minimize curb cuts (consolidate the driveway to the existing parking lot and the former alley approach into one curb cut), and to provide adequate landscaping. The City Engineer commented the following are required prior to final site plan approval: 1) Completion of the City of South Bend Utility Verification Form; 2) Approval of sidewalk, curb cut, lighting, and overall site improvement to reflect the Master Plan for the surrounding area. Of specific concern for this site are the plans for sidewalk improvements; 3) Development of the site requires City approval of a Drainage Plan that meets the City's requirement to store all runoff from developed areas on site; 4) Development of the site also require compliance with the City's Downspout Disconnection Program; 5) Verification of required (if any) waivers; and 6) Payment of Final Site Plan Review fee.

The petitioner is not proposing any written commitments. The petition is consistent with the West Side Main Streets Plan (2014) which identifies this area as a retail node. The future land use map identifies this area as part of the Olive Street node. The petition is consistent with the City Plan, South Bend Comprehensive Plan (November 2006): LU 2.2 Pursue a mix of land uses along major corridors and other locations identified on the Future Land Use Map. Lincoln Way West is a mixture of commercial, business, and residential. Single family residences border to the north and east. The most desirable use for this site is one that allows for the reuse of vacant land. With adequate landscape buffering, the adjacent property values should not be affected. It is responsible growth and development to allow for the expansion of an existing business, in conformance with the Comprehensive Plan. The staff has no additional comments. 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 variance #1 to allow a reduced residential bufferyard, subject to the entry doors for the proposed structure being limited to the south or west facades. The staff recommends denial of variances #2 and #3 for the perimeter

landscaping and architectural standards. Rezoning the property will allow for the expansion of an existing business. With appropriate buffering and adherence to the architectural, the proposed expansion will be a responsible asset to the neighborhood.

JOHN MCNAMARA: this is part of the daycare?

KEITH CHAPMAN: Yes.

JOHN MCNAMARA: This is not a new operation?

KEITH CHAPMAN: Correct.

LARRY MAGLIOZZI: Question for the petitioner. The exhibit that you just handed out has a revision date that is earlier than what we have in our packet. We have a revision date of 9/20, you handed out a revision date of 9/15. Is there a difference?

BERNARD FEENEY: I am with Lang, Feeney & Associates. Offices located at 715 S. Michigan Street. Nothing substantial if anything has changed. Ms. Williams operates the Kids Company Daycare Center located at the north west corner of Elmer and Lincolnway. That operation has existed there. Ms. Williams bought the property in December 2000 from Laslo Corley and his partner Mr. Graph who were leaving that site at that time and moving to a downtown location. Bettie has operated at this location and another location for well beyond the sixteen years that she has owned this property. Bettie's years of operation spans more than two generations. Her service area extends almost to the state line, extends over to the Mishawaka City limits and south at least to Chippewa if not a little further on occasion. She does go out and provide pick up service for many of the kids who need it that are in her care. This building that she is asking for on this property for the rezoning is to house her busses that she uses to pick up the kids. Currently, they sit out in a fenced in area generally shown as the asphalt parking lot on the north side of the existing day care building. Essentially what she wants to be able to do is to build that 40 X 60 building to house some of the outside items that she will store during the winter time along with storage for the van that they use to pick up the kids. This lot that she will be improving is a lot that has had a house that was torn down in recent years. I presume no one eagerly moved forward to try and purchase that property. Bettie's use is consistent with the use for the daycare operation. It is somewhat unique that an operation of Bettie's size would offer to go out a pick up the children. Bettie is not a franchise operation, Bettie is Bettie, that's it. Bettie does not operate a facility that is comparable to the one near Memorial Hospital or any of the larger facilities that do in fact run vans to pick up the kids. Bettie is improving the property and is moving forward. We ask that all of the requested variances be granted to allow Bettie to improve this in a cost effective manner.

DAN BREWER: The staff is recommending denial of the variance because of the entry doors, but they would be ok if the doors were oriented into a different direction. Does the petitioner have any object to any of that?

BERNARD FEENEY: Mr. Brewer, from the plot plan that I handed out, it is fairly obvious that the only real access to the building is from the east or the west. There may be a small amount of access to the building available on the south side of it but it very quickly becomes unusable based on other ownership. The primary reason that Bettie has chosen this size building and this location on the property is that it allows her to pull in off of her own property and then pull out through the alley, making it an easy in / easy out to the building itself. That is part of the reason why we have asked for the variances on the landscaping.

DAN BREWER: How many doors are there on the west side?

BERNARD FEENEY: I would assume at this point that there is one door for the vehicle.

DAN BREWER: Covering the full 40 feet almost?

ELIZABETH MARADIK: There would also be a door on the east side.

BERNARD FEENEY: That is the plan at the current time.

GERRY PHIPPS: It seems to me the biggest difference between the petition and what the staff is asking is the architectural standard. Do I understand that she would like to build just a metal building. The architectural standards would require something difference as far as the exterior?

BERNARD FEENEY: That maybe economically outside of her reach.

GERRY PHIPPS: But that is a major difference between what she is petitioning for and what you are asking for.

BERNARD FEENEY: Correct.

GERRY PHIPPS: Will the architectural standards allow for doors at each end?

ANGELA SMITH: Yes, the architectural standards don't restrict the door location, they restrict the type of material that would be on the façade that faces Elmer. The concern that the staff had about having the door on Elmer is the house that is on the property to the north is pretty much right there where that door would be. Our preference is that if they were going to be that close to the property with such a large building that the alley would be used as an in and out.

GERRY PHIPPS: Could they comply with the architectural standards by just putting a little bit of brick work or something on the Elmer Street side?

ANGELA SMITH: The requirements are minimal. It is two building materials, one of which has to be 10% of it.

GERRY PHIPPS: So we are not talking about a difference between a metal building and a brick building. They just have to do a little bit to approve the appearance of Elmer Street side.

LARRY MAGLIOZZI: I just want to expand on the staff's reason for essentially not having the door on the east end of the building. Not only does it concern the residential dwelling to the north of this site, which could essentially be a maneuvering area before the door but across Elmer Street are also residential dwellings. That was the concerns of that area. This is already a large building, so we are trying to make it feasible and at least offer some protection.

GERRY PHIPPS: If they didn't have a door at the east end would they be able to move the building a little bit farther east to give themselves more maneuvering room to back out the west end of the alley?

JOHN DELEE: My understanding now is that the bus is parked outside there?

BERNARD FEENEY: That is correct.

DAN BREWER: How many busses are there?

BERNARD FEENEY: The bus currently occupies a space at the north end of the building. There are 2 busses.

JOHN DELEE: So there are two? That is why there is a 40 foot...

BERNARD FEENEY: The picture shows two (pointing to the powerpoint).

### 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.

STEVE VOJTKO: The two rezoning site plans that I have in front of me, there is a little bit of a difference in the height. One says 21 ½ and the other says 22.

BERNARD FEENEY: The legal maximum height is 22.

ANGELA SMITH: The legal minimum height is 22. In a mixed use district, there is a minimum height of 22 feet. Again, the mixed use district is generally done along corridors and is designed to have buildings look like store fronts. So the minimum 22-foot height would give an appearance of a larger storefront building.

STEVE VOJTKO: So is the one from 9/20/16 or 9/15/16 the correct one?

ANGELA SMITH: If approved, they did not ask for a variance from that height, so they would have go to the Area Board of Zoning Appeals (ABZA) and ask for that variance.

STEVE VOJTKO: Is there a reason why they couldn't put the doors on the south side?

BERNARD FEENEY: The only reason is that in an instance like this, it is going to be much easier for the drivers to come in through the current curb cut for the vacated alley and then to approach the building from the east, position the vehicle and then be able to pull on out into the alley and away. It is much simpler and when things are simpler, it is much less difficult on equipment itself.

ROBERT HAWLEY: There is a curb cut on Elmer then?

BERNARD FEENEY: There are two curb cuts currently. One that accesses the fenced in parking area

and the other as you can see for the vacated alley. Each of these curb cuts are existing today.

ROBERT HAWLEY: I don't think you answered Gerry's question. Why can't that building be moved forward so that they could back out into the alley and give them more room?

BERNARD FEENEY: It could be moved forward some. The idea was to exit out through the alley and then over to Olive on the west side of the block.

JOHN MCNAMRA: The Department of Community Investment requested that it be west.

ELIZABETH MARADIK: I can appreciate that we want to be supportive in the growing of small business but we want to make sure to protect the neighbors, especially when we are talking about a building pretty substantial in size and given the nature of what that building will be used for with the vehicles pulling in and out. Would it be an option or would they be willing to only put a door on the west side and use the alley, to help prevent some of that negative impact that is going to happen to the neighbors if you put in on the east side of the property?

BERNARD FEENEY: A west entrance only does not actually work with flow of the property itself. The flow of the property is entrance off of Elmer Street, open the doors, allow the children to get out and escort them into the building, and then what? Drive around the block to come into the west end of the building? At that point you have the vehicle already on the property and you suggest the vehicle back out?

ELIZABETH MARADIK: Or you could shift the building to the east some and enter from the south where is an already pre-existing parking lot. You could pull in, let the kids out, and then they could pull into the garage from the south using the existing parking lot.

BERNARD FEENEY: If that is the only way I am getting this approved, then I am sure she would consider it.

ADAM DEVON: Is there a fence there though?

BERNARD FEENEY: There is no chain link fence on the petitioner's property. The only chain link fences are along this area here (pointing to the powerpoint) and then ties back into the building.

GERRY PHIPPS: Are these entrances going to be single or double garage type doors?

BERNARD FEENEY: Single.

GERRY PHIPPS: Just a single door?

BERNARD FEENEY: Right.

GERRY PHIPPS: I guess my opinion is that although it may be less desirable to have a door on the east side facing the residential, it is back far enough, I would be willing to approve, as long as they comply with the architectural standards that let them have doors at both ends. These busses are fairly good size from the pictures I see. It is going to take quite a bit of maneuvering room and, also, if there are small kids around it is much safer if the driver is always moving ahead rather than have to back and turn and make some other kind of maneuvers to get out of a single door. It just seems to me like what they are proposing with a single direction flow through this essentially a garage would be better.

STEVE VOJTKO: Are you going to have a pedestrian door on the south side then to let people in and out?

BERNARD FEENEY: I haven't seen actual plans for the building itself. I don't know if the pedestrian door is planned for the east or south end of the building. If it were part of this bodies recommendations and the City Council approved it, then I am sure that condition could be easily met.

PHIL SUTTON: I would agree with Gerry. Just looking at the aerial photograph it looks like that asphalt is used to the south as a play area. I think I see four square and some other game type things drawn out there.

BERNARD FEENEY: There are.

PHIL SUTTON: It would make sense to move it up away from that asphalt area.

BERNARD FEENEY: During the day, when I visited the Daycare on two separate occasions, the three spaces closest to the street were the closest available. The van itself blocked any kind of access to the western part of the asphalt area to the north. That area is striped for parking fully and could be used for parking if it is needed. Primary pick up and drop off by parents who are collecting their children or dropping them off at the beginning of the day is done via Elmer Street.

STEVE VOJTKO: Is there any activity for this building after 5:00 – 6:00? When do they cease operation?

BERNARD FEENEY: I am not certain. I do know that the day does begin early with breakfast for some of the children and some of the staff as well. It continues along throughout a good portion of the day. It is almost a two shift operation.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Steve Vojtko and unanimously carried, a proposed ordinance of Bettie Jo Williams to zone from SF2 Single Family & Two Family District to MU Mixed Use District, property located at 1037 Elmer Street, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Rezoning the property will allow for the expansion of an existing

business. With appropriate buffering and adherence to the architectural, the proposed expansion will be a responsible asset to the neighborhood.

Upon a motion by Gerry Phipps, being seconded by Phil Sutton and carried, the variance 1) from the required minimum side residential buffer yard setback of 15' to 7' along the north property line; was approved, subject to the rezoning being approved by the Common Council; and variances 2) from the required Type A landscaping to none along the east and west property line and 3) from the required Section 21-03.02(13) Architecture standards to allow the construction of a metal building, property located at 1037 Elmer Street, City of South Bend, were denied

- C. A combined public hearing on a proposed ordinance of the Department of Redevelopment City of South Bend to zone from GB General Business District and seeking a Special Exception Use for manufacturing retailer, property located at 331 W. Wayne Street, City of South Bend - APC# 2798-16.

KEITH CHAPMAN: The petitioner is requesting a zone change from GB General Business District to CBD Central Business District and seeking a Special Exception Use for a manufacturing retailer. On site is an existing building and parking lot. To the north across Wayne Street are businesses zoned MU Mixed Use District. To the east is the South Bend VA Clinic zoned CBD Central Business District. To the south is a parking lot zoned GB General Business District. To the west across William Street is a vacant lot zoned GB General Business District. The CBD Central Business District is established to promote the development of the downtown region of the City of South Bend as a center for trade, finance, government, high density residential and entertainment districts within St. Joseph County and north central Indiana. The regulations of this district are intended to encourage high density, mid-rise and high rise developments which may include a mixture of compatible urban uses. The development standards in this district, while designed to provide for high density development, also encourage a pedestrian friendly environment supportive of urban residential developments, retail, restaurant, theater and similar business and cultural uses associated with major metropolitan areas. On site is an existing 8,650 sq. ft. building that is proposed to be converted to a brew pub. The remainder of the site is a parking lot with a primary entrance on William Street. This property was zoned Light Industrial prior to 2006. William Street has two lanes with a center turn lane and on street parking on the west side of the street. Wayne Street has two lanes. This site will be served by municipal water and sewer. The Department of Community Investment offers a favorable recommendation and on the associated special exception request to permit a manufacturing retailer. DCI recommends that in lieu of any other perimeter or parking lot screening landscaping, the petitioner provides street trees at approximately 44' spacing in the Wayne and William Street tree lawns. Over time, the petitioner can add landscaping to existing on-site paved areas that will not be used for parking. The City Engineer commented the following are required prior to final site plan approval: 1) Completion of the City of South Bend Utility Verification Form; 2) Approval of sidewalk, curb cut, lighting, and overall site improvement to reflect the Master Plan for the surrounding area. Of specific concern for this site are the plans for access and screening; 3) Development of the site requires City approval of a Drainage Plan, and payment of the corresponding Drainage Review Fee, that meets the City's requirement to store all runoff from developed areas on site; 4) Development of the site also require compliance with the City's Downspout Disconnection Program; 5) Verification of required (if any) waivers; and 6) Payment of Final Site Plan Review fee. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006): ED 1.2 Encourage the reuse of abandoned and underutilized land and structures. The future land use map identifies this area as commercial. There are no other plans in effect for this area. The properties east of the site are predominantly commercial and business oriented. To the north of Wayne and to the west of William is a mixture of residential and business uses. The most desirable use is

commercial. The renovation and reuse of a vacant building should not adversely affect adjacent property values. It is responsible development and growth to reuse a vacant building, in conformance with the Comprehensive Plan. The site will require variances from the Area Board of Zoning Appeals for perimeter landscaping and parking area screening along the west property line. Also, the configuration of parking spaces will need to be modified to reflect the requirements of the Zoning Ordinance. 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. The staff recommends that the special exception use be sent to the Common Council with a favorable recommendation. Rezoning this property to CBD Central Business District and granting the special exception use for a manufacturing retailer allows for a use that is compatible with the existing Central Business District and will complement the surrounding uses.

JIM PRIEBE: I reside at 51260 Covese Drive, Granger. I am with Bare Hands and we have bumped up against a production problem in Granger. We are having a tough time delivering as much beer as we can. This is primarily a site that we will be using to produce, bottle and can beer. There will be a small tap room to start with. The building is really maintained for what we want to do with it, but right now it is basically just to start the retail side of the business.

#### IN FAVOR

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

#### REMONSTRANCE

BRENDA LUCAS: I reside at 701 Rex Street, South Bend. I didn't show up for this particular petition. I'm listening and waiting for the next petition to come up. This is going to be a brewery? Am I to understand that it is next to the Veteran's Clinic?

ELIZABETH MARADIK: The Veteran's Clinic is leaving.

BRENDA LUCAS: So the Veteran's clinic would be leaving before this brewery is started up? I am just asking a question because both my husband and I are Veteran's and we use that clinic, so it was just of interest to me.

JACK SMITH: I reside at 220 S. William, South Bend. I have lived there since 1960. I love South Bend. I want to see the success of Downtown South Bend. I am really pleased at what is going on. I live half a block from this. I cannot come up here and say to you that I am against this, but I do have some points of what I would like to see and some idea of what is going to happen to it in the future. I have a four car garage that backs up onto an alley. I'm very active in the neighborhood in trying to get it cleaned up, always arguing with H & G for the way they keep their property. I had wonderful cooperation from the City zoning board. They are out there all the time inspecting the property. It is a cyclone fence around it, not very well maintained, been there since they were able to get it rezoned for tube storage. I am concerned about things such as lighting. Is a restaurant going in? I hate flashing lights, neon lights. I am concerned about the hours of operation. I think you are going to be a manufacture, more than a restaurant. I am worried about the alley is supposedly supposed to maintained by homeowners, I don't like the idea of trucks in the alley and me having to maintain it. I would like some assurances there. Right now, the way the City has changed all the streets in town parking is a real problem. I get up at 7:00

a.m. and you can't park on William or Wayne Street. It is full. I am the only real resident. To the north of me is a Lawyer's office, to the west of me is Aids Ministries who just recently announced they are opening a pharmacy. I have no idea what that will do to the traffic in the neighborhood. There is no shrubby and the fence is very ugly. A couple blocks away from me is the stadium. I don't know what is going to happen there, but he has enough money to do whatever he wants. He seems to be very excited about that neighborhood and maintaining it and making it more desirable to make more people to walk from the downtown area to the stadium. Security, I would hope that the police department would do some security. At the present time all hours of the night cars run up and down that alley and they will park 15 minutes later they are gone, by the time you get the police out there.

## REBUTTAL

JIM PRIEBE: Speaking of the lights, we have no plans for anything but a subdued look. We don't want to be a very flashy. If you notice the breweries these days, they are a little darker and the light is a little dimmer. There will not be any neon type lights or flashing, or LED type light.

STEVE VOJTKO: Are there any concern with parks, churches, schools with the special exception use?

ANGELA SMITH: We don't have separation requirements for manufacturing retailers from those uses.

After due consideration, the following action was taken:

Upon a motion by Robert Hawley, being seconded by Adam Devon and unanimously carried, a proposed ordinance of Department of Redevelopment City of South Bend to zone from GB General Business District to CBD Central Business District, property located at 331 W. Wayne Street, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Rezoning this property to CBD Central Business District and granting the special exception use for a manufacturing retailer allows for a use that is compatible with the existing Central Business District and will complement the surrounding uses.

Upon a motion by John DeLee, being seconded by Robert Hawley and unanimously carried, a Special Exception Use for a manufacturing retailer, property located at 331 W. Wayne Street, City of South Bend, was sent to the Common Council with a FAVORABLE recommendation, subject to the rezoning being approved by the Common Council

ELIZABETH MARIDIK: Mr. Brewer, before we move onto the next item, due to what I believe is a conflict of interest, I am going to excuse myself from any discussion and vote from the next item.

- D. A combined public hearing on a proposed ordinance of Richard & Linda Ford and Civil City of South Bend to zone from SF2 Single Family & Two Family District, PUD Planned Unit Development District and MU Mixed Use District to MU Mixed Use District and seeking a Special Exception Use to allow for 2 off-site parking lots, and seeking the following thirteen variances: 1) from the required minimum 5 ft. front yard setback to 0 ft.; 2) from the required minimum 20 ft. front yard setback for parking to 5 ft.; 3) from the required minimum 15 ft. side residential buffer yard to 5 ft. for a building, trash dumpster, parking, and driveway; 4) from the required minimum 15 ft. rear residential buffer yard to a minimum of 5 ft. for a building, trash dumpster, parking, and driveway; 5) from the required 15 ft. side and rear residential buffer yard to a minimum of 0 ft. for a balcony structure and driveway; 6) from the maximum allowed 40 ft. building height to 42 ft.; 7) from the required Type A landscaping of required front perimeter yards to none; 8) from the required Type B landscaping of required side and rear perimeter yards to none; 9) from the required screening parking spaces to screening with small shrubs and trees

and 10) from the required screening of a trash dumpster to none; 11) from the required 9' X 20' parking spaces to a minimum of 9' X 19'; 12) from the required minimum 24 foot wide maneuvering aisle to a minimum of 22 feet wide; and 13) from the required 137 parking spaces to 37 property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend - APC# 2799-16.

KEITH CHAPMAN: The petitioner is requesting a zone change from SF2 Single Family & Two Family District, PUD Planned Unit Development District and MU Mixed Use District to MU Mixed Use District; seeking a Special Exception Use to allow for two off-site parking areas; and seeking thirteen variances from the development standards. On site is an existing building and vacant land. To the north are single family homes and vacant land zoned SF2 Single Family and Two Family District and a parking lot zoned MU Mixed Use District. To the east are single family homes and vacant land zoned SF2 Single Family and Two Family District. To the south are single family homes and vacant land zoned SF2 Single Family and Two Family District and MU Mixed Use District. To the west are single family homes and vacant land zoned SF2 Single Family and Two Family District and MU Mixed Use District. The MU Mixed Use District is established to promote the development of 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 site is a proposed 60,100 sq. ft., two story building. The proposed development includes 9,500 sq. ft. of retail with 50,600 sq. ft. of residential with 56 total units. There is a parking lot with five spaces and a dumpster to the northeast of the proposed building. In addition, there is a parking lot with 32 spaces to the south across Rex Street. There is an open space along Portage Avenue, in front of the parking lot reserved for future development. Prior to 2006 these properties were zoned commercial and residential. In 2013 the northern portion of the property was rezoned to PUD to allow for a proposed housing development. Portage Avenue, Rex Street, and California Avenue have two lanes with on street parking. This site will be served by municipal water and sewer. The Department of Community Investment offers a favorable recommendation for the rezoning and special exception use. In regards to the variances: 1) Approval of the proposed yard and building setback variances. Seek other locations for trash dumpster; 2) Height variance - A standard 2 story building utilizing the existing structure would appear to fit in the Ordinance standards; 3) In lieu of perimeter landscaping, street trees should be placed in the tree lawn along California Avenue, Portage Avenue (both north and south of Rex), and both sides of Rex Street at approximately 44' spacing or 22' with smaller trees; and 4) Approval of the parking space size and drive aisle width variances. The City Engineer commented the following are required prior to final site plan approval: 1) Completion of the City of South Bend Utility Verification Form; 2) Approval of sidewalk, curb cut, lighting, and overall site improvement to reflect the Master Plan for the surrounding area. Of specific concern for this site are the plans for access and screening; 3) Development of the site requires City approval of a Drainage Plan, and payment of the corresponding Drainage Review Fee, that meets the City's requirement to store all runoff from developed areas on site; 4) Development of the site also requires compliance with the City's Downspout Disconnection Program; 5) Verification of required (if any) waivers; 6) Payment of Final Site Plan Review fee; and 7) Minimum of 1 parking space to be required of each dwelling unit, with retail parking being provided via on street parking. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006) H 1.3 Encourage the development of mixed use buildings. The future land use map identifies this area as Mixed Use and Commercial. The Portage Avenue Commercial Corridor Revitalization Action Plan (1999) objective to require site plan review would set corridor standards such as: encourage side and rear parking lots, front lot line buildings, control signage, restrict lightings impact on nearby residences, and require landscape

screening. The Portage Avenue corridor is primarily residential with some businesses near the intersection of California Avenue. The most desirable use is mixed use. The reuse of a vacant structure should not adversely affect surrounding property values. It is responsible development and growth to allow the adaptive reuse of a vacant building and lots while meeting the goals of the Comprehensive Plan. The staff has no additional comments. 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. Based on information available prior to the public hearing, the staff recommends that the special exception use be sent to the Common Council with a favorable recommendation. The staff recommends approval of the variances, however notes that variance number nine is no longer necessary. Rezoning this site to MU Mixed Use will allow for the reuse and redevelopment of an underutilized build and vacant land. The special exception use will serve the residents and retail users of the site. The proposed development will fill a need in the neighborhood for affordable housing and local retail.

JOHN MCNAMARA: Can I assume that the first three, four or five are because of the size of the building that is already there?

ANGELA SMITH: Correct. The existing building is already in front of the five-foot setback.

DAN BREWER: Why is number 9 no longer necessary?

KEITH CHAPMAN: The original site plan showed a different landscape screening along the parking area.

MICHAEL DANCH: I am with Danch, Harner & Associates. Offices located at 1643 Commerce Drive, South Bend. If this sounds familiar to you, we went to the City and County Council probably three years ago. This is the one we did a PUD on. It was for multifamily for housing and also for some retail space. Also at that time, because we were doing the mixed use type situations, we had worked with the staff and we did a PUD at that point. When we did the PUD we actually wrote our own development standards. This time what we are doing is, we met with the staff and have done what the staff asked us to do which was actually take the PUD that we originally had approved for the building site and some of the surrounding property and asked for a rezoning to the mixed use category. It allows for some of the flexibility for the owner. When you do a PUD you are really locked into a site plan. If you want to make any type of changes, because of the way the City Ordinance is written, you really have to come back and rezone the property completely. By doing it to the mixed use district, it makes it easier for us to get the use approved before. The bad side you see are all the variances that we have to ask for. So, when I did the original PUD I wrote my own developmental standards. We didn't need any variances because we wrote everything that we needed. In this case, I have to ask for variances from the standard requirements for the mixed use. That is why you see the number that we have before you. The particular building is the old Ward Baking building. What they propose to do is they want to go for tax credits. This is going to be focused for senior housing. What they would like to be able to do is 56 units maximum of senior housing. Thirty-eight would be one bedroom, eighteen would be two bedroom units. They would also set aside for themselves 9,500 square feet, 8,000 square feet of that would be in the basement, 1,500 square feet is on the first floor. That is to allow for some commercial type use, which would be a café for the residents or the neighborhood residents. What they are also going to be doing is having health services or, job placement services in the basement area to help the residents or the neighborhood area. Also, they would probably have a small retail shop where you could buy everyday goods for the apartments. They thought it would be best to have that type of mixed use in the building itself. That is why you see the requirements and the way we had split it up, but this is not like a commercial building that you see. Most of the things that they are asking for are more focused for the development of senior housing. The second part of this is we have added the City property. We were working with both the

staff and Community Investment. The configuration for the parking lot for the south property we have worked out with Community Investment. They asked us to shift parking to the east side of that property, so it would be south of Rex, east of Portage. What they wanted us to do as part of the overall City Development Plan was to leave a spot in between the west side of the parking lot and Portage for future development. If someone else were to come in there, because it is zoned mixed use, they could either add some commercial type stores and also residential uses in that area. We took their suggestions and shifted everything as the staff had mentioned and put the parking area on the east side of that south part of the property. If this development goes through, they will be asking for tax credits. We are probably looking at an investment of about six million dollars plus to do the renovation work in the building and all of the site improvements. As you had mentioned, most of the landscape requirements or the variances that we asked for are for the protection of the neighborhood. We have worked with the staff on providing landscaping for the parking area so there would be screening and mitigation in-between where our development is and any adjacent use from the properties. The same applies for the dumpster location and the parking lot. We are going to be adding additional street trees as well. So we will be working with the City of South Bend and most likely the parks department. What was asked of us is to install them along Portage because of the Ward building it sits right at the property line, which is a zero-foot setback. We will see if we can work with the parks department and the City in putting the tree grates along Portage to help with the streetscape along there where there isn't right now. Farther south, the City had put additional trees south of Rex on Portage. One of the other things that the staff had mentioned besides the variances that we are requesting is we also need a favorable recommendation on the Special Exception Use. The reason for that is because the two parking areas that we are showing on this site are actually separate from where the buildings are located. That is considered offsite parking by the Zoning Ordinance. Offsite parking under the mixed use category to have a special exception approved. The parking variance we are asking for, again, it's a senior development so we worked with the staff on coming up with a number that was consistent as well as Community Investment for the parking areas.

#### IN FAVOR

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

#### REMONSTRANCE

BRENDA LUCAS: I reside at 701 Rex Street, South Bend. My husband and I have been actively involved with the Chapin Park Neighborhood Association since purchasing our home and we continue to do so. We don't have an issue and we are not opposed to the underutilized building at that corner being retro fitted, particularly for a senior center which wasn't included in the packet that we received in the mail concerning this petition. Our concern relates to the parking that the gentleman referenced lastly. It would be variance #13. Our questions are, based on what we read and what the gentlemen just said, why was the required 137 parking spaces reduced to 37 when initially, they had asked for 102 parking spaces for the 56 proposed multi family dwelling units to a minimum of 49 parking spaces? I am wondering what this reduction in the parking spaces relates to number 1 and number 2, will this proposed project be all senior housing? If it is not or is all senior housing, then I am trying to figure out what seniors need with a bicycle repair space? It's just not adding up to me. I am really concerned about this neighborhood. It is relatively quiet. It's kind of a buffer zone. As a matter of fact, our house is the first house that is listed on the national registry of historic places in the Chapin Park Neighborhood. We are kind of concerned about this parking situation, the traffic situation. If there is going to be a café and commercial space that quite frankly we really believe is going to attract a certain element that may not be bad but certainly won't be seniors? Then there is the chance, this parking spilling out onto Rex Street. We are very, very concerned about this area, which is why my husband and I purchased this property in the first

place, because we thought it was very promising, interesting and historic area in this town and have worked very hard to try to clean the area up and to encourage other individuals on that side to clean up as well. So we don't want to roll back any progress that we may have made in that area.

ROBERT BOWMAN: I reside at 804 Portage Avenue, South Bend. I have two major concerns looking at this. I would love to see something happen to this poor building. I have real problems with what I see here. My first issue is; what do you think you are going to accomplish leaving forty feet of retail space along Portage Avenue? That space will never be developed for anything and if it is, where are they going to park? You have taken all of the available parking area for that block and given it to someone who is next door. Parking in this neighborhood is very tight as it is. A lot of the houses along Portage do not have on-site parking on the property. Everyone in the neighborhood parks on the street. You come Super Bowl weekend when everyone is having parties, this isn't even downtown and you are still two blocks away. I have big issues with them giving up that much space on that piece of property. I grew up in that house. I remember when that was the old Gerard Pharmacy and the strip mall that went with that. We had parking problems when that was available and they weren't busy. Then you are telling me 37 parking spots for 56 two bedroom units. The math does not work. They are planning on dumping all the parking on the streets. Portage Avenue is a major artery in this part of town. What does that look like in the winter when it snows? I can tell you now, you are not going to get old folks out there digging out their car when it gets plowed in. I have real issues with what they want to do on the north side of the property as far as the dumpsters not being screened and not doing any landscaping around the property. We are trying to clean this neighborhood up for years and the Near Northwest Neighborhood Association is doing a really good job of bringing back the entire corridor and they are saying basically screw you and all your rules, this is what we want to do, we are going to show off six million dollars and the City will let us do it. Sounds like the City is in on this. They are not taking into respect the whole flavor of the neighborhood. Again, a very poorly maintained building that is falling down and we are talking about a building that the back of it is so rotted out that when I was in High School, kids on my bus kicked in the back wall and stole change out of the back of the building. This is something you tear down not rehab into an old folk's home. We haven't had a chance to prepare. We didn't see any maps until you people put them up on the wall here a couple minutes ago. I have real questions on the parking and what they are going to do with the space and if you approve taking half of the old Gerard lot as parking lot, what kind of development do you expect to see in the front and where would they park? Are you going to turn around two three years from now and say I want to put 4,000 feet of retail space and I have no parking? How are you going to turn around and ok that, because you better believe I will be back here again to have that conversation with you again.

CHARLENE BOWMAN: I reside at 2727 Tomahawk Trail, South Bend. This was for us a dream house. We loved it. When Gerard was getting ready to go out of business, I went to him and I talked to him and I said I want to buy your parking lot. He said I am not quite ready to sell it. Then a couple of years later, the whole block was sold. It then became a grass field. By the way, Code Enforcement should be out there more often. I went out there one day and measured the grass, it was 18 inches. Is that the way the City maintains it? We used to call that parking lot Lake Gerard, because it had such rotten drainage on the lot. There is another issue with that whole area. People in that neighborhood in that area have tried so hard to bring it back up. It is a great neighborhood. It has a lot of issues. It has been a disgrace that that building has sat there like that. My other son and I quite frequently go down that street and he says, you know mom, if you take a look at the outside of that building, don't you want to take your loppers and at least trim the trees that are coming out of some of the cracks? There are trees coming out of the roof, growing out of roof of that building. Why has it been allowed to go this long? Now the City wants to plow possibly six million dollars, tax credits. Go back to the parking lot. Go back to all of the variances that we have talked about. If this property were in any other neighborhood, would you even be considering any variances? If it were in Granger, you wouldn't even have this conversation. Try any

other area. You wouldn't be here; we wouldn't be here. You have got a facility that is going to be for the elderly population primarily. It is interesting. Take a look. I invite you to go down that area. People that are older like to walk, they also need to have some park benches, or at least some places to sit. Show me any place around there where there is one. If they are going to take public transportation the bus stop is there, any time you have to get on a bus there. You are battling for your life. It is not safe as it is now. You can't possibly have 37 parking spots; it isn't going to happen. I can tell you this after living many years in that neighborhood, the minute the snow plows go down that street, you have got four to five feet of snow up on those sidewalks. They were never plowed out or shoveled out unless we did it. Talk about putting landscaping in there, I invite you to take a look at the trees that were put in there that were allowed to die. They were never replaced. I wanted to buy that property because I wanted to invest in that area. When I contacted several members in the city about the possibility of purchasing that property once it was a field, I was told oh it will never be sold unless it goes to housing. Three houses they wanted to put in there. They would not even entertain the possibility. I wanted to come before your group, I said, can I try it? They said don't even bother. What if I get an attorney? Don't even bother they said. Now you are talking about putting in a parking lot that isn't even adequate for the existing people. You talk about an alley way. I invite you to go down that alley way. Make sure you got good snow tires. Make sure you don't fall into any of the ruts. Not maintained, never have been. Very narrow, not well kept up. Can't even get garbage trucks down there good part of the year. I ask that this body very seriously take a look at whether or not we really are doing what the people that have spent thousands of hours trying to pull up that neighborhood any justice by approving not enough landscaping, not enough parking, not enough caring. I love that area. I would go back there tomorrow. My son owns that house as of tomorrow. He just signed the papers.

LARRY LUCAS: I reside at 701 Rex Street, South Bend. I have a concern about the security. That can create a lot of problems with the seniors. We all know that crime over there is rampant. And another thing, what the young lady was saying yes that it is true. When the snow comes it is really hard to see them out there trying to shovel snow or they might have to get someone to shovel it. The City itself won't come through, I bought a snowplow and went down Rex Street plowing the snow out myself. After I did it here comes a City plow putting it all back. I am just wondering now what would happen if I hadn't even tried to move all the snow out of the way. It wasn't only the City trucks it was trucks getting stuck there constantly. She is right about the alley in the back. The garbage trucks, I have seen them get stuck. The problem exists. There is a lot of crime in that area. A substation might help.

DAN BREWER: I would just like to point out that the petition is being tendered by a private outfit that wants to do a project and our job as an Area Plan Commission is to determine whether or not a project comports with the Comprehensive Plan, and is properly zoned. It is not our job to examine the history of property. I am not belittling anything that you said, but it is really not the City that is pushing the project. There was something in the comments that made it sound that way.

ROBERT BOWMAN: Who exactly is the Civil City of South Bend listed on the petition?

DAN BREWER: They are the owner of the parking lot, and as such they have a requirement to have their name on the petition if it is going to be rezoned.

ROBERT BOWMAN: Exactly who is the Civil City of South Bend, is that the municipality of South Bend?

LARRY MAGLIOZZI: Yes it is. It is the Civil City of South Bend.

ROBERT BOWMAN: Then the City is involved in this project then?

DAN BREWER: The City is selling the property to the owner yes.

ROBERT BOWMAN: And they are part of this petition?

DAN BREWER: Right as they have to be legally.

ROBERT BOWMAN: So you just said the City is not part of this petition.

DAN BREWER: I said the City is not pushing this petition. I was attempting to clarify; I wasn't going to argue.

### REBUTTAL

MICHAEL DANCH: On the alleys that they were discussing. The alleys would have to be re-built and brought up to City standards, so the alleys that you see there right now are in very bad condition. They would have to be re-paved, re-built completely to be able to be used the way that we have shown on the site plan. We did work with Community Investment and it was Community Investment that guided the design for that south parking lot that I discussed that we are mainly using the 32 spaces that are shown there. They were the ones that wanted to keep the west portion of that property open for future development. If any development were to come in, don't know of any right now, but if any development would come in that is zoned mixed use. They have to make the parking requirements for whatever use they would intend to use that property for. If they do not meet the parking requirements then we have two things available to them, which is to go to the ABZA, or to limit the type of use they put there so that they can create and have parking onsite for their particular uses. The question about the trash dumpster, we have a screened trash dumpster, but because the way the ordinance is written, it says you are required to have landscaping on three sides. We have a dumpster enclosure completely; you would not see the dumpster at all. We are going to have a structure that encloses the dumpster itself. Because the way the ordinance is written I have to ask for that particular variance from the landscaping portion. To the east side where the dumpster is, there is landscape screening on the entire east property line from south side of California down to the alleyway. It would be completely screened from the residents or any property owner that would buy this property or even be close to the property. I will let Brian discuss the other issue the residents have had.

BRIAN POZEN: I am with the Engle Group. Office located at 860 E. 86<sup>th</sup> Street, Suite 5, Indianapolis. We are the co-developers of this property with the Near Northwest Neighborhood. We proposed this project for low income housing tax credits the last four years. They are in support of the project. This represents some adjustments from years past. I wanted to make sure that the board knew that the Near Northwest Neighborhood is going to be the end owner. We are helping them through this redevelopment process. We are comfortable as a senior property, we manage over 2,000 units in three States, with a .8 spaces per unit ratio. That is pretty typical of our senior properties both rural and urban. This property represents a wonderful benefit where it is directly on the bus route, so we expect that to be a major component of the transportation needs of our seniors. We don't expect the parking lot to be full, quite

frankly. We are not concerned with the reduced parking. We do have a unique concept. We are going to have a blue zone friendly building. If you have heard about that concept it is engulfing your health care systems and we are tailoring our services and our retail and our tenant criteria to help promote blue zones and among that is bicycles. We expect bicycles to benefit the seniors with adult trikes, that kind of component and the retail is also to benefit the neighborhood. That was the request of the Near Northwest Neighborhood group. Again, we are comfortable with the retail components. It will not be traditional retail. Most of it is in the basement. There will not be high levels of staff or visitors for that matter. It is truly designed for the neighborhood and the tenants. Not to say we will turn away folks from outside but we just don't expect to be a traditional retail use. If that makes sense. We already have some uses signed up for our project. I will leave it at that. If there are any other specifics that I missed, I would be happy to answer them.

STEVE VOJTKO: What is the area in between the parking spot on Portage Avenue? Is that going to be greenspace or paved parking lot?

MICHAEL DANCH: The one on the south side?

STEVE VOJTKO: Yes.

MICHAEL DANCH: That is the one that Community Investment wanted us to keep open for future development. Right now it is already zoned mixed use. Right now anything that is allowed under mixed use could potentially go in that area, but as the residents had mentioned, what happens under the zoning ordinance, whatever the use is that goes in there, whether someone wanted to build a building, single family house or anything else, you have to meet the parking requirement for what that would be. What would also happen in this case, is that if we are using the east side of the property for the parking area, we would actually go through a subdivision process and split off the parking lot that we are talking about for the special exception and leave that front portion for future uses.

GERRY PHIPPS: In your discussions with the City, they indicated that if the 37 parking spaces didn't prove to be adequate, then they would then allow you to add more parking into this reserved area that they don't think you will need?

MICHAEL DANCH: That would be something we would take a look at. What the residents had mentioned is when we first submitted this petition, we actually had a larger parking lot on this property and as they had mentioned I think we were up around 42-47 spaces if I remember the number correctly. It was the City Community Investment Department that had asked us to bring that back down. If we found that there would be a problem with that then we would ask to put in additional parking in there. Because the special exception is basically for the south side of that property from Rex to Portage, we could do that if there was an issue. The agreement is that the Civil City of South Bend would be selling that piece a property. We would have approval from them.

GERRY PHIPPS: As it stands right now, the City would continue to own that open section?

MICHAEL DANCH: That would be correct. That is one of the reasons I would have to go through the subdivision process. If the end result would be that they want to keep that portion for future development, then we would subdivide it and create legal lots of records for those.

BRIAN POZEN: The reason for that pause is because we are not going to know. We submit November 7th for tax credits. We won't know till late February early March, so there is kind of a commitment now but not pulled through till we get confirmation on the tax credits.

JOHN MCNAMARA: I just find it incredible that we spend all this money on a set of standards and then we just throw out 100 parking spaces. Then why have the standards? Why require 137 if you are only going to approve 37?

GERRY PHIPPS: It would be a big difference if this were apartments for students where you are going to...

JOHN MCNAMARA: Then change your standards.

GERRY PHIPPS: In order to do that, we would have to have one standards for senior citizen apartments and one standard for student housing. I think that is what you are saying we should have.

JOHN MCNAMARA: Earlier we just threw out another 150 parking places. Where are these people going to park? I have always had this problem about parking.

GERRY PHIPPS: I think we do, in the way we are doing it without having a separate set of standards for senior dwellings, alarm a lot of the public when they see this drastic reduction on the variance.

SETEVE VOJTKO: We have roughly 42 units, let's assume there is a car per unit, so that is 42. Then you have family coming over to visit from time to time. There might be an extra ten cars. It just doesn't make sense to me. I mean 37 units are parking not without any extra. You can't park on Portage Road because that is so busy. What is going to be in that area until it is developed? Is it going to be asphalt or greenspace?

MICHAEL DANCH: It would be greenspace. Actually, what we did on the site plan is that we also created a landscape buffer there between the parking area and Portage Avenue. What you see where it says future development there is a parking screen there of evergreen screening along there that would screen the front portion of that parking area so going down Portage Avenue you can see a screened parking lot and we would also do the over story trees there.

JOHN MCNAMARA: Are you rehabbing the building that is there?

MICHAEL DANCH: Yes. They are actually taking...

JOHN MCNAMARA: You have a proposed building on here.

MICHAEL DANCH: The reason we did that, John, was because they are taking portions of the existing building down. They are renovating portions of that building, so I show it as a proposed building.

JOHN MCNAMARA: So the open courtyard is not there now?

MICHAEL DANCH: That would be correct. That is going to be the end result. Basically, the back portion is going to be rebuilt and that will be the new portion of the building.

GERRY PHIPPS: I don't think we noted in the Public Hearing that we have a letter from Near Northwest Neighborhood in support of this.

DAN BREWER: Let the record show that we have a letter from the Near Northwest Neighborhood Association in support of the petition.

STEVE VOJTKO: In this slide it says 56 units. Am I reading it wrong? On the application it says 42. Is there a reason for the discrepancy?

KEITH CHAPMAN: There was an error in the staff report originally. The site plan stated 42 units, so that was what you read in the staff report, it is actually 56.

JOHN MCNAMARA: 56?

STEVE VOJTKO: So that makes parking issue even more important.

ANGELA SMITH: The parking calculation that they are requesting is based on 56 units.

After due consideration, the following action was taken:

Upon a motion by Gerry Phipps, being seconded by John DeLee and unanimously carried, a proposed ordinance of Richard & Linda Ford and Civil City of South Bend to zone from SF2 Single Family & Two Family District, PUD Planned Unit Development District and MU Mixed Use District to MU Mixed Use District, property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Rezoning this site to MU Mixed Use will allow for the reuse and redevelopment of an underutilized build and vacant land. The special exception use will serve the residents and retail users of the site. The proposed development will fill a need in the neighborhood for affordable housing and local retail.

A motion was made by Gerry Phipps, being seconded by John DeLee to send the Special Exception Use for 2 off-site parking lots to the Common Council with a favorable recommendation, property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend DID NOT PASS.

GERRY PHIPPS: If there is a vote against the special exception use, you would have to tear down part of the building and put parking on the side of the building in order to develop that site.

JOHN MCNAMARA: Can't put 10 pounds of potatoes in a 5-pound sack.

GERRY PHIPPS: But the other option would be to deny the parking variance and require them to put more parking on the off-street. I guess I have a question of whether your voting on that because you are against the number of parking spaces or whether you are opposed to the concept of the parking being across the street from the building.

JOHN MCNAMARA: Perhaps if the City is really interested in this, they will do something.

GERRY PHIPPS: If we deny the Special Exception Use for off-site parking, we have essentially killed the whole project. We haven't allowed the City to expand the off-site parking lot because it is not allowed.

JOHN MCNAMARA: If we deny it, can the City Council approve it?

GERRY PHIPPS: Not a variance.

ANGELA SMITH: If you send the special exception unfavorably, the City Council can act on it how

they choose. It is a recommendation on the special exception.

JOHN MCNAMARA: There you have it.

ANGELA SMITH: On the variance, however, it stops with the Plan Commission.

JOHN MCNAMARA: So the variance would not be reviewable?

ANGELA SMITH: The variance, no. The special exception to allow them to do something off their property could be decided by the Common Council. If you deny the variance for the parking calculations, the City Council does not have any say in that and they would have to go to the ABZA six months from now.

A motion was made by Steve Vojtko and no second was made to send the Special Exception Use for 2 off-site parking lots property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, to the Common Council with an unfavorable recommendation. DID NOT PASS.

JOHN MCNAMARA: I am confused. I guess what I am going to do is cave into what Gerry is saying that if we deny the variance, it will kill the project. So I am willing to vote...

MITCH HEPPENHEIMER: This is not a variance.

JOHN MCNAMARA: What?

DAN BREWER: This is the special use exception.

ANGELA SMITH: I think what you are saying is that you are changing your opinion on the special exception part?

JOHN MCNAMARA: I am saying I am changing my vote on the approval of the variance.

DAN BREWER: We didn't get to the variance yet.

JOHN MCNAMARA: The motion was to approve the variances.

ANGELA SMITH: No. It was to send the special exception use favorable to the Common Council to allow them to have off street parking.

A motion by Adam DeVon, being seconded by John DeLee to send the Special Exception Use for 2 off-site parking lots property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, with a favorable recommendation to the Common Council. DID NOT PASS.

PHIL SUTTON: We don't mind off-site parking; we just don't think there is an enough parking places.

JOHN DELEE: That is not the issue here.

PHIL SUTTON: It is the issue.

STEVE VOJTKO: If they had more parking, I would approve it.

MITCH HEPPENHEIMER: You have what you have in front of you. Now vote.

A motion by Steve Vojtko, being seconded by Robert Hawley to send the Special Exception Use for 2 off-site parking lots property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, to the Common Council with an unfavorable recommendation. DID NOT PASS.

Upon a motion by Gerry Phipps, being seconded by John DeLee and carried, a Special Exception Use for 2 off-site parking lots property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, was sent to the Common Council with NO RECOMMENDATION, subject to the rezoning being approved by the Common Council.

MICHAEL DANCH: Just want to bring up one point. You are voting on variances; the board members have the ability to make a change for the request from parking. If there are a number of parking spaces that this board feels are better than what is being requested the board can make that change. I think one of the Commission members said what we are asking for is too small. The number that is needed is 137. The one we asked for is 37. If this Commission, for the variance, said you know what you need to do is give us 50 spaces or whatever, then what would happen is we would have to come up with that and what would end up occurring is on that special exception we were just requesting that means on the parking lot to the south we would tell the City that we need more parking and that is where we would put it.

MITCH HEPPENHEIMER: On the bottom of page 3 of your staff report you have 1 through 13 those are the variances; they are eliminating #9. So you are looking at 1-8 and 10-13. What Mr. Danch says is that if you can approve some of those, not approve some of those, you can take 13 and maybe give a number you feel more comfortable with.

MIKE DANCH: That's exactly right. You can see that we have 32 parking spaces, so if you said we want more parking on that west side and you want another 30 spaces and you are comfortable with that number, then you can vote that way and say we will approve the variance subject to this number of parking spaces.

Upon a motion by Gerry Phipps, being seconded by Phil Sutton and carried, the variance(s) 1) from the required minimum 5 ft. front yard setback to 0 ft.; 2) from the required minimum 20 ft. front yard setback for parking to 5 ft.; 3) from the required minimum 15 ft. side residential buffer yard to 5 ft. for a building, trash dumpster, parking, and driveway; 4) from the required minimum 15 ft. rear residential buffer yard to a minimum of 5 ft. for a building, trash dumpster, parking, and driveway; 5) from the required 15 ft. side and rear residential buffer yard to a minimum of 0 ft. for a balcony structure and driveway; 6) from the maximum allowed 40 ft. building height to 42 ft.; 7) from the required Type A landscaping of required front perimeter yards to none; 8) from the required Type B landscaping of required side and rear perimeter yards to none; 9) from the required screening parking spaces to screening with small shrubs and trees; 10) from the required screening of a trash dumpster to none; 11) from the required 9' X 20' parking spaces to a minimum of 9' X 19'; 12) from the required minimum 24-foot-wide maneuvering aisle to a minimum of 22 feet wide; and 13) from the required 137 parking spaces to 56, property located at 736 California Avenue, 808, 812, 824, 828, 830, 832, 834, 836, 838, 906, 908 and 910 Portage Avenue, City of South Bend, were approved subject to the rezoning being approved by the Common Council.

## ITEMS NOT REQUIRING A PUBLIC HEARING

### 1. Miscellaneous:

- A. Findings of fact for granting Variances for property located at 4246 Meghan Beeler Court, City of South Bend – APC #2793-16

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Robert Hawley and unanimously carried, the Findings of fact for granting Variances for property located at 4246 Meghan Beeler Court, City of South Bend, were approved.

- B. Findings of fact for granting Variances for property located at 10261, 10289, and 10343 McKinley Highway, St. Joseph County – APC #2795-16

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Robert Hawley and unanimously carried, Findings of fact for granting Variances for property located at 10261, 10289, and 10343 McKinley Highway, St. Joseph County

### 2. Executive Director's Report:

LARRY MAGLIOZZI: I want to bring you up to date on the Lakeville Zoning Ordinance. We are very close to getting a final draft. Hopefully by early spring you will see that in front of you. We anticipate working on North Liberty's rather quickly also. We are making progress on that.

There has been some discussion at the Executive Committee meeting about a formal training for the Plan Commission. Sometimes it is good to hear from experts that are not as close to you as we are. I am having discussions and hopefully by next meeting we will have a plan in place. It would include the Plan Commission and the ABZA. The goal is to have this training and then we will have the materials that the staff could do yearly refresher course.

DAN BREWER: State Law and the Ordinances that describe the function of the Area Plan Commission give us many responsibilities, among them is to keep records and collect fees and conduct hearings, such as we have today. One of the basic responsibilities that we have under the Statute and the Ordinance is that we send matters of public hearing with a recommendation of favorable or unfavorable to whatever Council or legislative body has the responsibility of passing or denying those petitions. We don't do that if we send things with a no recommendation whatsoever. Now there are times, it has happened today and last time we met and there are times before as well, before we have even gone through the motions to recommend favorably or unfavorably, where we have gone straight to no recommendation whatsoever. We are not fulfilling our responsibilities if we do that. If we have a situation like we had today where we conducted votes and we could not come to a decision just by virtue of the fact that the voting, turned out that way, there is another option we can do and that is to table it and take it up the following month if there is some need for additional information or something. If there is no need, then it is a dead option. The last option is when all else has failed. That is if we can't come to a decision to issue a favorable or unfavorable recommendation. I would submit we don't have to vote on the no recommendation, but we will continue to do that. We won't entertain motions for no recommendation until we have gone through

the process. Otherwise we are not going to carry out the responsibility of the Area Plan Commission.

ROBERT HAWLEY: I think part of our situation today is how many members are we missing off of this board today?

DAN BREWER: Yep.

MITCH HEPPENHEIMER: We need to try as hard as we can to get somewhere. The first recommendation out of the box is a no recommendation, that's just not the way it should function. You have some criteria that you are supposed to use to reach a decision. Your criteria are a lot different than what these Council's use. You don't use politics. You don't use those kinds of things. You have certain criteria that you have to use. That's why this training is necessary for everyone. It is the staff's obligation to train you and give you the understanding of the criteria to make these decisions, what you need to consider to make those decisions. That is why the training will be mandatory as best we can. It is a serious thing and we have to try to do what we do. Your job is to use that criteria to try to get to a decision. Whatever it is, it is. Whatever they do with it, they do with it.

PHIL SUTTON: Just the example today, I think our concern was the number of parking spaces. Really, we weren't concerned about the off-site and we should have just ok'd that exception and then we come back to the variances and we say 55 or whatever it was.

MITCH HEPPENEHIMER: And perhaps, I am not suggesting how you do your business, but perhaps a better way of handling it would have been saying this is my concern is there some other way we can get to that. I am sure the staff would be more than happy to explain.

PHIL SUTTON: I think everyone got confused on how to get that.

DAN BREWER: Our life got a little more difficult with the combined public hearings.

GERRY PHIPPS: It made it a little easier for the ABZA though.

LARRY MAGLIOZZI: To put a positive twist on things, tonight this board has had a lot more discussion on a lot more items on every petition than I have heard in a long time. That's good. As Mitch pointed out you have to make the effort to make the points of view and I have heard a lot of that. That is the way it should be for every meeting. It will stretch the meeting out a bit, but that's what you need. Remember, as Dan said, our life got a lot more complicated when we decided to do combined hearings.

ADAM DEVON: I have been on the board for a few years. I am still struggling to figure out why we are giving these no recommendations. Is it a State Statute, what is it that's says as a Plan Commission why we can't decide. Why does it go to the Councils?

DAN BREWER: They are the elected officials. They are the ones with the responsibility.

ADAM DEVON: Why would it not stop at us?

DAN BREWER: They have the authority for the land use.

ANGELA SMITH: The special exceptions are unique to St. Joseph County. There is a carve-out in the state law that states if your county is more than 200,000 or less than 400,000 then your special exception

goes to the council. There are only two counties in the entire state that have that population and St. Joseph County just happens to be one of them.

LARRY MAGLIOZZI: The types of recommendation are in the state law. Another section of state law gives guidance to the council on what they can or cannot do. State law is really designed to have a lot of the decisions be made here.

3. Minutes and Expenditures:

A. Approval of the minutes from the September 20, 2016 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the minutes from the September 20, 2016 meeting of the Area Plan Commission were approved.

B. Approval of the expenditures from September 20, 2016 – October 18, 2016

Dept. of Public Works - \$30.69; Gates Toyota - \$89.89; South Bend Tribune – \$20.81; \$10.22; \$21.90; \$22.27; \$20.81; \$9.49

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley, the expenditures from September 20 – October 18, 2016 were approved.

4. Adjournment: 5:45 p.m.

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DANIEL H. BREWER,  
PRESIDENT OF THE COMMISSION

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LAWRENCE P. MAGLIOZZI,  
SECRETARY OF THE COMMISSION