

MINUTES

POSEY COUNTY AREA PLAN COMMISSION REGULAR MEETING

THE HOVEY HOUSE
330 WALNUT STREET
MT. VERNON, INDIANA 47620

AUGUST 12, 2021
6:00 P.M.

MEMBERS PRESENT: Mr. Mark Seib – President, Mr. Hans Schmitz – Vice President, Mr. Mike Baehl, Mr. Andy Hoehn (via Zoom), Mr. Randy Owens, Mr. Dave Pearce, Dr. Keith Spurgeon, Mr. Randy Thornburg, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne – Executive Director, and Mrs. Becky Wolfe – Administrative Assistant.

MEMBERS ABSENT: Mr. Kevin Brown

APPROVAL OF MINUTES: Hans Schmitz made a motion in the affirmative to approve the minutes of the last regular meeting as emailed. Motion seconded by Dave Pearce. **(8-0) Yes. Motion carried.**

REZONING – TABLED FROM JULY 8, 2021 MEETING:

DOCKET NO: 21-06-RE-APC
APPLICANT: Steve Noelle
OWNER: James E. & Louis Winterheimer
PREMISES: Part of the Northeast Quarter of the Southwest Quarter of Section 26, Township 6 South, Range 12 West, lying in Marrs Township, Posey County, Indiana. More commonly known as 10325 Middle Mt. Vernon Road, Mt. Vernon, Indiana. Containing 1 acre more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Petition to rezone property from A (Agricultural) Zoning District to R-1 (Residential Single-Family) Zoning District under the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mark Seib confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute. Mark Seib asked if there were any conflicts of interest. Hearing none, he asked if anyone was here to speak regarding this request.

JIM WINTERHEIMER: 10405 Middle Mt. Vernon Road, Mt. Vernon, IN. There is a five-acre tract with this house, I want to break off one acre with the house, and the other four acres build another house on it.

MARK SEIB: So, you want to subdivide the property.

JIM WINTERHEIMER: Yes. I live right next door to the property.

MINDY BOURNE: He wants to divide this house off from the other home. He could do that as an Exempt Division but he would need a minimum of two acres. He just wants one acre, so it has to be done as a Minor Subdivision. The first thing he needs to do is rezone it to residential. If that gets approved then it will go through the Minor Subdivision approval process with the APC.

MARK SEIB: Are there any questions from the board? Mr. Winterheimer, you may have a seat. At this time, we will open it up to the floor for public comment. If there is anyone here wishing to speak for or against the proposed Rezoning, please come forward. Seeing and hearing none, we will close the public portion. Now it is up to the committee to discuss and take action as they see fit.

Mr. Seib confirmed with Mindy Bourne that there were no letters, emails or phone calls.

MARK SEIB: I think we've seen this many times before, where they want to split parcels of land.

A motion was made in the affirmative by Andy Hoehn to approve Rezoning 21-06-RE-APC. Randy Thornburg seconded the motion. **Roll call vote. (8-0) Yes. Motion carried.**

MINDY BOURNE: Mr. Winterheimer, this now goes on to the County Commissioners. The County Commissioners will hear this next Tuesday at 9:00 a.m. in this room. I will present it to the Commissioners, but they always ask that the owner be present as well in case they have questions.

The Proposed Findings of Fact were then read by Mindy Bourne. A motion was made in the affirmative by Hans Schmitz to approve the Findings of Fact for Rezoning #21-06-RE-APC. Motion was seconded by Keith Spurgeon. **Roll call vote (8-0) Yes. Motion carried.**

REZONING:

DOCKET NO: 21-07-RE-APC

APPLICANT: Steve Noelle

OWNER: James & Kathy A. Petrig

PREMISES: Gross Point Exempt Subdivision Lot 1 Part of the Northeast Quarter of the Southwest Quarter of Section 23, Township 5 South, Range 12 West, lying in Robinson Township, Posey County, Indiana. More commonly known as 10301 Damm Road, Wadesville, Indiana. Containing 2 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Petition to rezone property from A (Agricultural) Zoning District to R-1 (Residential Single-Family) Zoning District under the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mark Seib confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute. Mark Seib asked if there were any conflicts of interest. Hearing none, he asked if anyone was here to speak regarding this request.

KATHY PETRIG: 10301 Damm Road, Wadesville, Indiana. We have about 5 acres and our home is on that acreage. We would like to take the two back acres and parcel it out for one of our children to build a home there.

MARK SEIB: So you will maintain two acres.

KATHY PETRIG: We are in the process of refinancing our house and they recommended that if we were going to do it, now would be the time so we could change the legal description of the property in with the refinance.

MINDY BOURNE: This one is a little bit different because they want to subdivide two acres. This lot is currently an exempt lot already. You are allowed four lots, 2-10 acres in size. This area has already had the four splits, Exempt II lots. So if they want to do more, they automatically fall under the Minor Subdivision. They can't do anymore exempt lots. And we have talked multiple times about this (Kathy and I).

MARK SEIB: Are there any other questions for the applicant from the board? At this point in time, we will open the floor for any public comment for this proposal. If none, we will close the public portion.

Mr. Seib confirmed with Mindy Bourne there were no emails, phone calls or letters.

MARK SEIB: Now, we will open it up to the board for any discussion or action.

A motion was made in the affirmative by Andy Hoehn to approve Rezoning 21-07-RE-APC. Mike Baehl seconded the motion. **Roll call vote. (8-0) Yes. Motion carried.**

MINDY BOURNE: This is a recommendation to the County Commissioners. This will be heard next Tuesday in this room at 9:00 a.m. I will present it, but they would like to have the owner present.

The Proposed Findings of Fact were then reviewed. A motion was made in the affirmative by Hans Schmitz to approve the Findings of Fact for the Rezoning 21-07-RE-APC. Motion was seconded by Randy Thornburg. **Roll call vote (8-0) Yes. Motion carried.**

REPORT FROM SPECIAL MEETING JULY 29, 2021:

ATTORNEY TRENT VAN HAAFTEN: Just as a reminder, at the special meeting where the public hearing was held, when the agenda moved into discussion of the preliminary development plan of Tenaska I think Randy made the motion to basically put it off until further information was made. Andy then added to that motion, with Randy's approval, to seek to employ Barry Tanner as an engineer as a means of assisting the Commission with reviewing the application of the Preliminary Development Plan at that point. The idea was that at tonight's meeting, schedule the resumption of the special meeting. I know since then Mr. Tanner has been contacted and this evening you would decide whether or not to engage him in terms as serving as that engineer. Tonight's meeting is to address the representation agreement that Mr. Tanner has presented to the Commission, as well as setting a date for the resumption of the special meeting.

MARK SEIB: Barry, would you please come forward. (Mr. Tanner passed out a copy of his proposal to the members. On file in Area Plan Commission Office.)

BARRY TANNER: So, what the proposal includes is a technical review of the preliminary plans submitted by Posey Solar LLC. I do have a copy of the binder and an electronic copy as well. I'm planning to review those from a site standpoint, structural standpoint, civil standpoint and will also be subcontracting QualEx Engineering to help me out with the electrical portion. I think that will be an important part of this. Maybe not so much in the preliminary, but in the final review for sure. We will be reviewing these plans to ensure conformance with the ordinance and any engineering standards, codes, and things of that nature. We don't want to get into a deal where we are saying this is a good or bad deal. We are looking at it just from a black and white kind of review here to help you out in case there are any questions that need addressed.

MARK SEIB: Are there any questions for Barry? I think you see his hourly rate that's there and the other engineer that he has hired to help with the electrical.

BARRY TANNER: This will be T and M. So it will be however long it takes to review it is what we will charge. The estimated time and material prices listed on there, \$7,000, that's the... I feel that's conservative. That is three full days for each of us to look at it. I don't think it will take that long for the preliminary part of it. Once we get final details, we can give a final proposal to do that if you want to use us on that as well.

MARK SEIB: Yes, we will have to through the process with that if we get to that point and address it from there.

RANDY THORNBURG: Barry, Where is QualEx out of?

BARRY TANNER: They are here in Mt. Vernon.

ANDY HOEHN: Was this supposed to be done by the end of the month?

MARK SEIB: I think the answer to that question is more or less when are we having the meeting. I think Barry has indicated that you could meet the requirements if we had it by the end of August.

BARRY TANNER: I think if we were given notice to proceed, we could finish things by August 25.

MARK SEIB: So, you can have a report by August 25?

BARRY TANNER: That is correct.

ANDY HOEHN: My amendment to Randy's motion at first was to have this completed in 30 days. If this can keep us on that timeline, then I think that is the direction we need to go.

MARK SEIB: A 30-day time completion would put us at August 29.

BARRY TANNER: I would just recommend whatever date we get this done, you give Posey Solar a few days to review the report as well so they can respond.

MARK SEIB: If you can get it to us the 25th or 26th, we would then send that to them as well, as well as anyone else that is required to receive it. Are there any other questions for Barry? I want to say thank you to Barry for coming in. I want to ask if we are willing to accept Barry's bid.

ATTORNEY TRENT VAN HAAFTEN: I just want to echo something that Barry had said. Our Solar Ordinance sets out specific areas that must be included in a Preliminary Development Plan. It sets out specific areas that need to be covered in the Final Development Plan. Barry's role in this is advisory, because there are going to be things that none of us are completely familiar with in terms of making sure that the application complies with the requirements of the ordinance. That just needs to be clear that he is not putting a stamp of approval on anything, he is advising you on the application, the Preliminary Development Plan, Final Development Plan and that it fits the Solar Ordinance.

A motion was made in the affirmative by Andy Hoehn to hire Tanner Engineering, LLC. Randy Thornburg seconded the motion. **Roll call vote. (8-0) Yes. Motion carried.**

MARK SEIB: Now we need to set a date. The 29th falls on a Sunday.

RANDY OWENS: There are interested parties that will want to see the report. What is a fair amount of time for them to review that report?

MARK SEIB: That is a very good question. This is a preliminary and there is not a lot of information in there that's to be gone through and reviewed. It's more or less does it meet the ordinance.

ATTORNEY TRENT VAN HAAFTEN: Randy is right, there should be a fair amount of time for some review of it. Again, this report is going to be advisory to this Commission.

MARK SEIB: It won't change any of the application that they have already done. It will just review for the Committee.

ATTORNEY TRENT VAN HAAFTEN: Let us anticipate that part of the Preliminary Development Plan requirements was to provide 1, 2, 3, 4. And 4 is not in there or it is just half of what you think it should be. This report is hopefully going to guide you, as well as any other information you have received, to say we are going to approve this plan, but we are going to put a limitation or restriction on it saying you have to come up with a better answer for number 4, because you haven't completed the answer to number 4 according to the Solar Ordinance. It will give you the guidance to approve or not approve. If approved, what other possible reasonable restrictions or additions, not otherwise provided in the ordinance, that you will want to put on your approval moving forward. And part of that answer is that this is not for a rehash of the public hearing. The public hearing was closed. This is to help guide you through considering approval or non-approval of the Preliminary Development Plan. If you think something is missing, you cannot approve it, or add that as a condition that you have to fill in this gap. Because then they will have to create the Final Development Plan and there is going to be another public hearing on that.

DAVE PEARCE: Is it customary for us to hire an engineering firm and for that information to go to the public and the public...

ATTORNEY TRENT VAN HAAFTEN: Anybody can make a public records request. So, at the end of the day, it can be accessed. This is an opinion of mine; one of the good things about our Solar Ordinance is that the public hearing aspect there is transparency there, and with the application and public hearing. My practical advice to you would be to make it available for public consumption. Again, we are not going to rehash the public hearing aspect.

DAVE PEARCE: I don't have a problem with the public seeing it, it's kind of unusual. It is to help us make up our mind...

ATTORNEY TRENT VAN HAAFTEN: The question was is it customary and obviously this is the first go-around for the Solar Ordinance. So, there are some things that are not customary. My answer is based on the way the ordinance is set up to make the application public. I can't foresee something that would be an issue. When you think about... Now if this was an Economic Development Project, there are some exceptions to public access laws that things are confidential. A company may not want to reveal confidential information. But, a report like this, I don't think anything is going to be confidential in that report.

RANDY OWENS: So, if I were to restate my question, it would be how much do we need to review it.

MARK SEIB: How much time do you think it would take for anyone on this committee to review what you are going to...

BARRY TANNER: Just from the brief viewing of it and thinking about what is required of your Preliminary Plans for the ordinance, there's not a lot of items in there. There are some check boxes that need to be taken care of. I would think a few days would be more than enough time to review the report. We are hoping it is going to be a very concise report. The question that might come in... As far as Posey Solar, there might be some items missing that they need to provide you or there might be some questions that they need to provide answers for at your next meeting. So, I think they would need the same amount of time to review it at least to have an answer for you.

MARK SEIB: We are now back to the date. With Andy's comment on the 30 days, that puts us on the 29th. Barry is saying we are getting the report the 25th, roughly. Does that meet all the statutory requirements?

ATTORNEY TRENT VAN HAAFTEN: It should.

MINDY BOURNE: Do they have to notice all of the adjoining property owners again and put new notices on the property?

ATTORNEY TRENT VAN HAAFTEN: My thought is to jump through every hoop, so re-notice as you did before.

MARK SEIB: With that being said, how much time do you need to make sure they get that.

MINDY BOURNE: That would require about 100 posters again. All has to be done at least 10 days before the public hearing. They have to send out the notices to all of the adjoining property owners, we have to do a legal notice and meet the newspaper deadline and then do the posters. When I checked on dates for the Community Center, I checked from mid-September to the end of September. That is what I was directed to do. I haven't checked for the end of August or prior to September 13.

REED SCHMITT: Posey Solar. We don't think there will be a problem sending out additional notices. We were looking at mid-September, September 14 or 15 as the date of which we thought... Assuming the report is available for your review by the 25th or 26th, we believe that we would be able to send out notices if we scheduled the meeting for the 14th or 15th.

MINDY BOURNE: I can tell you the dates the Community Center is available. September 13, 14, 27, 28, 29, 30.

MARK SEIB: September 13 is a Monday and the 14th is a Tuesday.

MINDY BOURNE: I started with the week of the 13th. I don't know if anything is available prior to that. Our regular meeting is the 9th. You also have Labor Day holiday in there as well.

DAVE PEARCE: I like the 14th.

MIKE BAEHL: That is our town board meeting.

ATTORNEY TRENT VAN HAAFTEN: The end of August would be rushing the newspaper. The soonest you can get it into the newspaper is August 18. I don't think we would be able to make that.

DAVE PEARCE: I think we were on the right timeline with September 13.

MARK SEIB: Does anyone have a conflict with September 13?

A motion was made in the affirmative by Dave Pearce to hold the continuance of the Preliminary Development Plan for Posey Solar LLC on Monday, September 13, 2021, at 6:00 p.m., Posey County Community Center. Randy Thornburg seconded the motion.
Roll call vote. (8-0) Yes. Motion carried.

ATTORNEY TRENT VAN HAAFTEN: Mr. Schopmeyer sent us a proposed... It's titled a Nonbinding Resolution. The remonstrating farmers and landowners are seeking a nonbinding resolution asking that Posey Solar/Tenaska... Actually, enter into good-faith negotiations regarding a UDA, Use and Development Agreement, binding upon both parties in county that adequately protects the interest of all parties. This is something that you may see at times in economic development projects. There is nothing under the ordinance that requires such a resolution or such a requirement. In fact, historically, this body has not adopted anything formally. If there has ever been question of remonstrators in regards to something, this body has always said go work it out if it is to be worked out. But this was submitted by Mr. Shopmeyer via email, I think to myself, Mark and Mindy yesterday or the day before. So, I don't know, Mark, if you want to put this formally on or not.

MARK SEIB: We received it, so I guess it is up to the board to discuss.

RANDY THORNBURG: I think a Use and Development Agreement would be a good thing. That way the two parties can actually get together and negotiate in good faith. It seems Mr. Schopmeyer and his group are having trouble being recognized by Posey Solar. This would basically bring them together. If they want to be a good corporate neighbor, I think this would be an excellent opportunity to show it. Both sides would get to reveal what their positions are. I would make a motion that we accept it.

A motion was made in the affirmative by Randy Thornburg to accept the Nonbinding Resolution as presented to the Posey County Area Plan Commission for the Use and Development Agreement.

MARK SEIB: I am just hesitating here for a second because we don't have a copy for the rest of the board to see.

Mr. Schopmeyer passed out copies of the Use and Development Agreement to the board members.

MARK SEIB: I want the members to be able to read it.

MICHAEL SCHOPMEYER: I understand that your council said this is not the custom in this county. This is a project of giant magnitude. In many counties in which we prosecute zoning, just as Posey Solar is here, we are required to submit one on all projects of this nature. So the way you do things here is not the norm. This Indiana statute controls zoning, you don't, and it is provided for within the statute.

ATTORNEY TRENT VAN HAAFTEN: Mike, could you give me a site to that?

MICHAEL SCHOPMEYER: Yes, I can. I don't have it right here but I can send it to you. The question was asked to me what was the last one that I had a situation where they did this and I don't remember the exact petition number. It was last year. I think it was pre-Covid or during Covid. It was a giant residential development on the North side of Evansville. The remonstrator group was sizable in that when we represented the remonstrator group. The developer was instructed to do exactly what is here. I've written it as nonbinding.

ATTORNEY TRENT VAN HAAFTEN: Is that in the resolution or is that the board directing them to do that?

MICHAEL SCHOPMEYER: The board directing them. There wasn't a written resolution. It was verbal. I can't think of the name of the petition.

MARK SEIB: We've never had one of these.

RANDY THORNBURG: I just think it is fair to both sides. There were numerous remonstrators plus the farmers and landowners. I don't know why anyone would want to object to an agreement like this. It is just good-faith negotiations.

MARK SEIB: I guess... And I understand what you are saying, Randy. The only question in my mind is that they have an application before us and we haven't even accepted it. I'm not for sure whether or not we say as of yet to force that because we haven't even accepted the preliminary. If we had accepted on July 29 the preliminary, I'd say then we would have something to discuss and ask for them to do.

REED SCHMITT: This is the first time seeing this. We believe it is out of the ordinary. Trent has already addressed that. The matter is in litigation. Mr. Schopmeyer's clients have sued the Area Plan Commission and the Board of Commissioners. That needs to play itself out and we think it is premature for us to engage in any negotiations with Mr. Schopmeyer's client.

RANDY THORNBURG: Are there any issues specifically, Mr. Schopmeyer that you would like to address in these negotiations with Posey Solar?

MICHAEL SCHOPMEYER: We were told at one point that they would work with us on the UDA and then everything just stopped. They gave you some of the comments. It is not nearly where it needs to be for these good people. We didn't bring the masses tonight for that reason. We've sent documents.

DAVE PEARCE: We are not in negotiations. Nothing is negotiating right now. We haven't even accepted their preliminary. How can this be a negotiation?

MICHAEL SCHOPMEYER: Because they filed documents. The minute they filed the documents... In their comment that this is premature because the litigation is pending, that is poppycock. Obviously, there is something going on here. There have been filings made. The minute they make a filing, this is a legal matter. To say this is premature and wait until litigation, then let's wait until litigation. Let's hold everything. If it is premature, let's hold everything. We haven't even gotten a response in discovery that we asked for. Part of the reason that people file litigation in public tribunals is to get the information. We are getting nothing. So if it is premature, it is premature for you to do anything. But the minute they filed it is a legal proceeding, Mr. Pearce.

DAVE PEARCE: I disagree with what you are saying.

MICHAEL SCHOPMEYER: Ok, that's alright.

RANDY THORNBURG: A lot of the farmers and remonstrators disagree with them driving stakes, destroying property and crops.

DAVE PEARCE: That doesn't have anything to do with this. This disagreement has nothing to do with this agreement.

RANDY THORNBURG: I think it absolutely does. I don't know why anyone would be opposed to the two parties negotiating.

DAVE PEARCE: Are we going to make the two kids play in the sandbox? Is that what you are saying?

RANDY THORNBURG: No.

RANDY OWENS: If I understand the process, when we get to the point where we approve the preliminary plan, we can add conditions outside the ordinance. It seems like that would be the appropriate time to add this condition.

RANDY THORNBURG: My point is the remonstrators, farmers and property owners out there are not getting information that they want and it is being concealed for whatever reason. I don't know why Posey Solar would be opposed to being a good corporate neighbor. What's the issue that would stop you? I've spent 22 years in the Iron Workers Local 103. As president, we did negotiations like that all the time for each job to make the process much easier rather than having conflict.

ANDY HOEHN: Mr. Chairman, I would like to make a point of order. This was not on the agenda. This entire discussion is out of order. There is no reason for the APC to be an arbitrator between two groups of professional adults. This is not our venue, this is not their venue and this is not what we should be talking about. This should be deemed out of order and we need to move on.

RANDY THORNBURG: I disagree.

MARK SEIB: Andy, are you making a point of order?

ANDY HOEHN: I am requesting that the Chairman call this out of order.

MIKE BAEHL: I will second Randy's motion.

MARK SEIB: Wait a minute. So we have a motion from Randy, Mike seconded that. We have a point of order that has been raised. I guess we need to get it cleared if that point is valid or not, Trent.

ATTORNEY TRENT VAN HAAFTEN: Andy Hoehn's point of order was that this was not included on the agenda and properly advertised. The Chair has to determine whether it is out of order or not. Typically, someone may appeal the ruling of the Chair. If that is then seconded, then the board votes to either reverse the ruling of the Chair or approve the ruling of the Chair. If the ruling of the Chair is approved, we are done. If the ruling of the Chair is not approved, then you move towards the motion on the floor at the second.

MARK SEIB: With this language we have here, does this have anything to do with the lawsuit or anything that might be affected or binding or anything like that?

ATTORNEY TRENT VAN HAAFTEN: This has no impact on the pending litigation.

RANDY THORNBURG: Mr. Schopmeyer, would you like to address the board any further on these issues?

MIKE SCHOPMEYER: The question of the point of order. This was the last thing that was said at the meeting in which there was some interplay between Ms. Solada and myself back and forth. The comment that this wasn't... didn't know this was going to be on... I said at the meeting this was going to be on. We were going to ask you to do this. So, the question of order I would hope the Chair would rule on and let the motion proceed and let there be a vote on the motion.

MARK SEIB: Ok. Randy, I need to be the one to call on the people to come forward. If you would like to ask somebody, ask the Chair. I am going to ask for the motion to continue with a vote to see whether or not it passes.

ATTORNEY TRENT VAN HAAFTEN: Are you saying you want to proceed with Randy's motion?

MARK SEIB: I want to proceed on with Randy's motion to allow for a vote.

ATTORNEY TRENT VAN HAAFTEN: Then the sequence of events that occurred was Andy raising a point of order occurred before Mike's second. So I think what you have to do as Chair, is to say it is not out of order and then we proceed with the vote on Randy's motion subject to Mike Baehl's second. As Chair, when a point of order is raised, you have to say it is in order or out of order.

MARK SEIB: Then I will allow that motion to go ahead and continue.

ATTORNEY TRENT VAN HAAFTEN: So you are ruling that it is in order. I think you should ask for a second again to Randy's motion and proceed from there.

A second was made by Mike Baehl.

ANDY HOEHN: I think for you to decide between two professional groups, this is not right. That is not what we are here to do.

MARK SEIB: Andy, what I want is for this committee to make the decision. That is why I passed it on. I don't want to make the decision. It's not me, it's us.

KEITH SPURGEON: If this is approved, does that force the two parties to get together?

ATTORNEY TRENT VAN HAAFTEN: That is an interesting question, because it is titled a nonbinding resolution but the language of it does say enter into good faith negotiations regarding a UDA binding upon both parties. I think there's some inconsistency with the drafting.

MIKE SCHOPMEYER: It says encourages and recommends.

ATTORNEY TRENT VAN HAAFTEN: Mr. Schopmeyer, your representation is there is no binding... the nature of this is not binding.

MIKE SCHOPMEYER: Absolutely. It is not binding. It is just to encourage it and that is why we wrote nonbinding. There is no shall/must language here. I knew from your conversation at the last meeting that it didn't have a chance of passing.

MARK SEIB: Hearing no other discussion, the vote is before you. If you vote yes, then it goes on and is nonbinding and is asking the two to participate in some negotiation of some kind, if both parties are in agreement.

RANDY OWENS: Who determines that the negotiation is good faith? If we enter into this nonbinding agreement, who determines that the parties are operating in good faith?

MARK SEIB: I can't answer that. There isn't a referee or judge.

RANDY THORNBURG: A good start would be if they were cordial and met and actually discussed the points.

KEITH SPURGEON: There is nothing right now that prevents that.

MARK SEIB: No, there is nothing to prevent that. We heard from the other council that they were concerned about the lawsuit and they didn't want to get involved in... That's their decision. I can't force somebody to do anything like that. But that seems to be their stance.

RANDY OWENS: This is totally encouraging that they get together, but it has no teeth.

MARK SEIB: That's the way I'm interpreting it.

RANDY THORNBURG: I think it looks good that the board would encourage that to happen to avoid conflict. That is all my point is.

ANDY HOEHN: It's not the boards job to encourage any parties to discuss with each other. Those are personal issues. If it's a civil issue, let them go deal with it. We are not arbitrators in this at all.

RANDY THORNBURG: I thought this board was here to represent the citizens of Posey County and I see this as exactly that.

ANDY HOEHN: Then let them talk, Randy. Nobody is stopping them. This resolution has no teeth. It is pointless.

RANDY THORNBURG: Then you ought to be a yes vote.

ANDY HOEHN: No, it's a no vote. This is pointless.

Roll call vote. (3-5) No. Motion failed.

MARK SEIB: I want to add one more thing, the two of you need to get together. At least get together & talk about if there is a possibility or not. I am going to make that recommendation from the bench here. In this resolution, there were no bindings. All I am asking is for you to have a discussion.

Andy Hoehn left the meeting at 7:11 p.m.

COMPLAINT: 515 Locust Street, Mt. Vernon, IN

ATTORNEY TRENT VAN HAAFTEN: If I can bring everyone back up to speed on this one, this was originally a complaint about vehicles parked in the yard, and the lack of any kind of driveway. Notice was sent a couple of times to the tenant at the property, Bridget Black. We also noticed the landlord of the property, but nobody ever showed up to address those complaints. Because of that, it got to the point that you said to just file the ordinance violation. So, we filed the ordinance violation. We had an initial hearing on it, or we were scheduled for an initial hearing, and we went to court, and Miss Black did show up for court as well as the landlord. We had a discussion beforehand, and what they provided to me was an older photograph, which I think I've sent to everyone, which indicated that in prior years, there had been a rock driveway to a garage. They also explained to me what they had been doing, Miss Black explained to me that she had been experiencing some health issues, but with all candidness, she said that she did not have a good excuse for not showing up to these meetings to address the complaint. Since the board had just dealt with a similar situation, on Canal Street, where some were parked along the street, and there was indication of prior rock in that area, instead of taking up the court time, my discussion with Miss Black was, will you be at one of these meetings to address this complaint? She said yes, and she is here. So, instead of moving forward with the ordinance violation, I thought we could just come back here & let you as a board address this. If you want to move forward with the ordinance violation, then so be it, but again, since we just came off of the Canal Street situation like a week or two before, and since she had the photograph, I felt like we should let her come to you to explain. So, that's where we're at.

MARK SEIB: So, the complaint was also showing that there were multiple vehicles, and I'm assuming that the picture that we received, and we'll ask her later on, that it doesn't appear that the whole lot was rocked.

ATTORNEY TRENT VAN HAAFTEN: Right, and I think that's some of the questions that we had. In the older picture, you will see a garage, which I do not believe that garage exists anymore. So, I had some of the same questions about the area. Also, it was explained to me that they had, again they can answer to this, removed some of the vehicles and had begun parking on the street. I think there was also an explanation, in

some of the pictures you'll see, it looks like a trench down the alley, in some of the newer pictures, apparently, they were having some water issues within the basement. So, they said trenching that area along the alley alleviated those water issues. But at the end of the day Mark, I thought, let them explain this & see how you want to proceed.

BRIDGET BLACK: 515 Locust Street, Mt. Vernon. Back in January I decided to rock just the back section near the alley to get my vehicles out of my yard. I did that not knowing there was a violation. In February I had the rock laid. The day I had the rock laid, Lorelei called me to tell me there was a violation that she had just gotten. I had already put the rock down. I spent \$600 to get the rock, dug a trench beside because the neighbors had put gravel all along their back and down the alley. So, it was all draining into my yard and into my basement. So we dug a trench down my property line in the alley so we could divert the water, and I could quit having water in my basement.

MARK SEIB: So, can you explain... with all the pictures we have, we have pictures of four-wheelers on a trailer, we have boats on a trailer, we have four-wheelers off of a trailer, we have cars and pickups. Have those all cleared the lot?

BRIDGET BLACK: The only thing that is there now are our trailers. The two four-wheelers are on our trailers, but that is the only thing that is in our yard.

MARK SEIB: Are they on the rock?

BRIDGET BLACK: They are on the rock, yes.

MARK SEIB: And are all of the other vehicles relocated someplace else?

BRIDGET BLACK: Yes, I am parking them on the street.

MARK SEIB: Are there any questions from the committee? I know we have a lot of pictures to look at here. Has there been any recent pictures?

MINDY BOURNE: The most recent pictures I have are from June 6. That shows the trailer, the boat... There are just two items.

BRIDGET BLACK: The older photo you have was provided by Lorelei where they had already had rock existing before I started buying it.

LORELEI BARNES: 613 College Avenue. The question I had, when I first got the notification, about the gravel, I called and was told there was a violation because they were parking in the yard. I hadn't talked to her yet. That is the day she already got gravel. They said I needed gravel, concrete, blacktop and I don't even remember the last thing. I called Bridget and she told me she had just put down gravel. I called back to the City and they said it has to be sealed gravel. I've never heard of sealed gravel. So, she explained it to me and I then got back with Bridget. I started looking for pictures and

thought we used to have gravel back there when Roger Barnes, my husband who passed away 11 years ago... We bought it in late 96, that is the old pictures, that is the sales disclosure that we had gotten from Shrode the day we bought it. You can see where the garage was and there was a double driveway of gravel already there. It was the same as the gravel in the alley, it was the same as the gravel in the parking lot over at Trinity. My concern was what was the exact problem. Was the problem that they put down gravel or was it the problem that they had vehicles on their yard? I wasn't for sure.

MARK SEIB: The problem was that they had vehicles on the yard. That was the initial complaint that we received that started this.

LORELEI BARNES: I was told it was the gravel. It was the wrong kind of gravel.

MARK SEIB: The first complaint was that the two pickup trucks, two SUV vehicles, two four-wheelers, one utility trailer, two off-road vehicle trailers, bass boat trailer, all were on the yard. That was the initial complaint. Obviously, what both of you are telling us now is that they have been removed from the yard, put on the rock, straightened it up and the rock doesn't cover any more than what it did when you first originally bought the property.

LORELEI BARNES: It goes farther back where the garage use to be. So, it used to be a garage with a driveway to the alley runs east west. So, they have the gravel going back to where the concrete pad use to be where the garage was.

RANDY OWENS: If all of the vehicles have been moved out of the yard, and the gravel was preexisting, and they have made a good-faith effort to comply, I would like to make a motion that we dismiss the complaint. Randy Thornburg seconded the motion.

ATTORNEY TRENT VAN HAAFTEN: Since there has been an ordinance violation actually filed in court, could you make your motion to dismiss the complaint filed with the APC as well as instruct your attorney to dismiss the ordinance violation in court?

RANDY OWENS: Yes, I will do that.

MARK SEIB: The question I have is why did it take you so long to answer the letter?

LORELEI BARNES: I didn't get it until that day she got it. I work two jobs. I'm a preschool teacher from 7:00 until 3:00. I run home and change clothes to be at work at 3:45 at the nursing home until 8:00 or 9:00. I had to ask off to be here tonight.

ATTORNEY TRENT VAN HAAFTEN: Mark, I would have to... Lorelei had communicated with me a time or two. This is not to throw you under the bus.

MARK SEIB: We try everything in the world to make contact before we go to this extreme.

LORELEI BARNES: It didn't even dawn on me to look for photos. I just found them. I apologize.

MARK SEIB: Ok. We have a motion on the floor. Is there any further discussion?

A motion was made in the affirmative by Randy Owens to dismiss the complaint filed with the APC as well as instruct our attorney to dismiss the ordinance violation in court. Randy Thornburg seconded the motion. **Roll call vote. (7-0) Yes. Motion carried.**

COMPLAINT: 621 E. 10th Street, Mt. Vernon, IN

MINDY BOURNE: I have been having trouble getting them to respond and I had to serve it by sheriff. It has been served as of July 19, but I still have not heard from them. You have the most recent photos in your packet. August 6 is the most recent photos of what it currently looks like.

MARK SEIB: Was this a complaint we had many years ago?

MINDY BOURNE: We've had this complaint I know at least one time.

MARK SEIB: And didn't they say they would pour concrete?

MINDY BOURNE: Yes, I think so. We've had this complaint before.

ATTORNEY TRENT VAN HAAFTEN: My question is, is this concrete that exists now, the poured concrete?

MARK SEIB: What I remember from before, they were going to go wider. This is more or less the same as it was before. We may have to pull records to verify that.

MINDY BOURNE: The area they were parking in was mud. But we have had this one before. This is not the first time.

DAVE PEARCE: When did this first start?

MINDY BOURNE: The service date was July 21. It was copy service.

DAVE PEARCE: Go to the next steps.

MARK SEIB: Dave is wanting to go to the next steps. What is the feeling of the board?

A motion was made in the affirmative by Dave Pearce to have the attorney Trent Van Haaften send them a letter. Mike Baehl seconded the motion. **Roll call vote. (7-0) Yes. Motion carried.**

DIRECTOR'S REPORT:

MINDY BOURNE: A couple of meetings ago, we had a complaint filed on Pearl Street. We actually closed the complaint; I believe it was at our May meeting. Now I have another complaint on the same property, for the same sort of thing. They are talking about the fence, because this was a fence complaint. It says they have put up a fence using old broken white plastic fence & other random items holding it. The last couple months ago we declared, that was the one that looked like a dog kennel. I can pass out the recent photos. We've already closed it.

MARK SEIB: Have you sent out anything?

MINDY BOURNE: I have not sent anything out to them. It's a new complaint, but the same complaint.

MARK SEIB: So, there was a new complaint filed, and we have not done anything with it, except to bring it here to discuss it?

MINDY BOURNE: Yes, because I was wanting some direction. I feel like it's something that we already closed.

RANDY OWENS: Does the fence look like it's just one giant dog kennel? Have they added any new material or anything? We had said that there is no ordinance on how big a dog kennel...

MINDY BOURNE: There's some other materials that I guess they are trying to make into a fence as well, connected to the dog...which some of this was in the previous photos. There was some of the white picket fence in the previous photos. I did ask the person who goes to take these photos, to go all the way around there. So, I think maybe we didn't see all of this the last time. But in some of these photos, I can see some white picket fence along with the dog fence.

MARK SEIB: In my opinion, with the new complaint, let's start the ball rolling again, and let's play it out according to our protocol. Let's let Mindy send the letters & start from there.

RANDY OWENS: I think in the letter, we need to be explicit that the fence is consisting of two different materials.

MINDY BOURNE: I think the issue was, last time too, there was no fence permit. And then we declared that it was a dog fence. There are several things here. There's no fence permit, but then the ordinance also states what type of material a fence can be constructed of. I think maybe this time, that is the direction that we need to go with it.

Dave Pearce made a motion that we proceed with processing this complaint. Hans Schmitz seconded the motion. **Roll call vote. (7-0) Yes. Motion carried.**

APPROVAL OF PAYROLL & BILLS: A motion was made in the affirmative by Mike Baehl and seconded by Dave Pearce to approve payroll and bills. **Motion carried.**

APPROVAL OF COLLECTIONS: A motion was made in the affirmative by Hans Schmitz and seconded by Randy Thornburg to approve collections. **Motion carried.**

CITIZENS CONCERNS: (None)

ADJOURNMENT: Dave Pearce made a motion to adjourn the meeting at 7:33 p.m.



Mr. Mark Seib – President



Mrs. Mindy Bourne, Executive Director

March 11, 2021

Staff Comments: The property being petitioned to be rezoned from A (Agricultural) to R-1 (Residential Single-Family) is 1 acre more or less. The property is located at 10325 Middle Mt. Vernon Rd, Mt. Vernon, IN. Property abutting this site is owned by the following:

1. Duane F. Woodley, 11100 Kramers Dr., Mt. Vernon, IN 47620
2. Edw F. Jr. & Rose M. Schamburg, 10318 Middle Mt. Vernon Rd., Mt. Vernon, IN 47620
3. Edward F. Jr. & Rose Schamburg, 10318 Middle Mt. Vernon Rd., Mt. Vernon, IN 47620
4. BAS Evansville Inc., 10424 Middle Mt. Vernon Rd., Mt. Vernon, IN 47620
5. Steven S. & Patti Steele, 4651 Hausmann Rd., Mt. Vernon, IN 47620
6. Edwin J. & Theresa A. Goebel, 10425 Middle Mt. Vernon Rd., Mt. Vernon, IN 47620
7. Harold E. & Estelle C. Waibel, 4515 Hausman Rd., Mt. Vernon, IN 47620
8. Roy L. Jr. & Debra Ann Tenney, 4601 Hausann Rd., Mt. Vernon, IN 47620
9. Charles U. & Patricia Kissel, 10131 Middle Mt. Vernon Rd., Mt. Vernon, IN 47620

Abutting properties are zoned A (Agricultural). This property is currently used as residential. The owners are proposing to rezone the property to R-1 (Residential Single-Family). The uses adjacent to the proposed rezoning are as follows: Residential.

☒ Favorable recommendation by the APC
☐ Unfavorable recommendation by the APC
☐ No recommendation by the APC

PROPOSED FINDINGS OF FACT
ON DOCKET NO: 21-06-RE-APC
PETITION TO REZONE: Steve Noelle
OWNER: James E. & Louise Winternheimer

1. Current conditions and the character of the current structures and uses in each district.

The Commission finds that the proposal ~~WILL~~/WILL NOT have an adverse impact on the current conditions in the area.

2. Responsible development and growth.

The Commission finds that the proposal ~~WOULD~~/WOULD NOT be consistent with development and growth.

3. Comprehensive Plan.

The Commission finds that the proposal ~~WOULD~~/WOULD NOT address the goals of the Comprehensive Plan.

4. The conservation of property values throughout the jurisdiction.

The Commission finds that the proposal ~~WILL~~/WILL NOT have effect on property values in the jurisdiction.

5. The most desirable use for which the land in each district is adapted.

The Commission finds the proposal ~~DOES~~/DOES NOT represent the most desirable use for which land is adapted.

Motion made to adopt the foregoing findings of fact by:

Hans Schmitz

Motion seconded by:

Keith Spurgeon

Adopted by Posey County Area Plan Commission

President: Mark Seib

Date: 8-15-21

July 7, 2021

Staff Comments: The property being petitioned to be rezoned from A (Agricultural) to R-1 (Residential Single-Family) is 2 acres more or less. The property is located at 10301 Damm Road, Wadesville, IN. Property abutting this site is owned by the following:

1. Harold W. Kaetzel, 10400 Damm Road, Wadesville, IN 47638
2. Shirley L. Schmidt Trustee, 10301 Winery Road, Wadesville, IN 47638-9564
3. Scott J. & Kristine M. Mayer, 10221 Damm Road, Wadesville, IN 47638-9162
4. Ryan P. Leibring, 2313 Section Line Road, Wadesville, IN 47638-0000
5. J. R. Seymour & Cheryl Seymour-Loving, 10311 Damm Road, Wadesville, IN 47638
6. Janet K. Stewart, 10308 Damm Road, Wadesville, IN 47638

Abutting properties are zoned A (Agricultural). This property is currently used as residential. The owners are proposing to rezone the property to R-1 (Residential Single-Family). The uses adjacent to the proposed rezoning are as follows: Residential.

☒ Favorable recommendation by the APC
☐ Unfavorable recommendation by the APC
☐ No recommendation by the APC

PROPOSED FINDINGS OF FACT
ON DOCKET NO: 21-07-RE-APC
PETITION TO REZONE: Steve Noelle
OWNER: James & Kathy A. Petrig

1. Current conditions and the character of the current structures and uses in each district.

The Commission finds that the proposal ~~WILL~~/WILL NOT have an adverse impact on the current conditions in the area.

2. Responsible development and growth.

The Commission finds that the proposal ~~WOULD~~/WOULD NOT be consistent with development and growth.

3. Comprehensive Plan.

The Commission finds that the proposal ~~WOULD~~/WOULD NOT address the goals of the Comprehensive Plan.

4. The conservation of property values throughout the jurisdiction.

The Commission finds that the proposal ~~WILL~~/WILL NOT have effect on property values in the jurisdiction.

5. The most desirable use for which the land in each district is adapted.

The Commission finds the proposal ~~DOES~~/DOES NOT represent the most desirable use for which land is adapted.

Motion made to adopt the foregoing findings of fact by:

Hans Schmitz

Motion seconded by:

Randy Thornburg
Adopted by Posey County Area Plan Commission

President: Mark Seitz

Date: 8-12-21