

MINUTES

POSEY COUNTY AREA PLAN COMMISSION REGULAR MEETING

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

DECEMBER 8, 2022
6:00 P.M.

MEMBERS PRESENT: Mr. Mark Seib – President, Dr. Keith Spurgeon – Vice President, Mr. Andy Hoehn, Mr. Joe Marvel, Mr. Randy Owens, Mr. Randy Thornburg, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne – Executive Director, Mrs. Becky Wolfe – Administrative Assistant

MEMBERS ABSENT: Mr. Mike Baehl, Mr. Dave Pearce, Mr. Aaron Neufelder

APPROVAL OF MINUTES: Joe Marvel made a motion in the affirmative to approve the minutes of the regular meeting as emailed. Motion seconded by Andy Hoehn. **Motion carried.**

APPROVAL OF MINUTES: Keith Spurgeon made a motion in the affirmative to approve the minutes of the special meeting on August 15, 2022 as emailed. Motion seconded by Randy Thornburg. **Motion carried.**

POSEY SOLAR – CONDITIONS TO FINAL DEVELOPMENT PLAN:

ATTORNEY TRENT VAN HAAFTEN: If you all remember from the August 15th public hearing the final development plan for the Polar Solar project was approved subject to two restrictions or provisions. One of those was in regards to Indiana Department of Natural Resources permits being obtained. That will be an ongoing provision until Posey Solar shows that those proper permits have been obtained. An Improvement Location Permit cannot be obtained before they present those to the Executive Director. The second condition garnered most of the discussion. Under Indiana Law when a Final Development Plan is approved or created, there can be an agreement amongst the parties involved in a project. I don't want to call it a monitoring, but I want to give you an example that provided by the remonstrators attorney. If you recall the Deaconess Ball park over on the east side of Evansville. When it was put in, a number of neighbors in a residential area around it. The neighbors had concerns of the light, noise, and traffic, I think things of that nature. In going forward with getting the proper zoning permission for putting in that ball field area. An agreement was reached between the developer and the neighbors in regards to certain activities and times of activities and things of that nature. So the same thing has occurred with this particular project, when the Preliminary Development Plan was approved part of that plan that was submitted to you to approve contained conditions.

Conditions one through twenty-three. A couple of those conditions, one of those was that Posey Solar would make a payment of \$25,000.00 to the Marris Volunteer Fire Department. At the time there was discussion of a berm type structure placed around the edge of Marris school and there were a number of other conditions. The type of panels, the type of vegetation so that was basically Posey Solar saying we will do this and make this a part of our project which you are approving. As you are aware, a number of the remonstrators or landowners here in Posey County filed a suit in regards to the process and amendment to the ordinance it went through. The remonstrators continued to have discussions with Posey Solar about additional conditions whether or not they would enter into those. A number of phone conferences, discussion back and forth amongst the attorneys and myself, Terry Hall and Mr. Schopmeyer, Mr. Golding, Mary Solada with Posey Solar. There was a lot of back and forth about all of the conditions. What you have been presented with are the conditions that the attorneys got to a point of saying that these apply appropriately as the law will allow them too. Not saying it's the policy to be adopted but saying in regards to the issues that we see moving forward these would be appropriate conditions for consideration of the Area Plan Commission.

So 1 through 23 there was what I would call clean up, no real changes in regard to substantive changes. One through 23 are essentially the same things that were in the Preliminary Development Plan. Conditions 24 through 28 are the additional ones that were negotiated and we have discussed. I provided you with a memo trying to summarize what they were. If you have any questions in regards to those, I would be more than happy to address them. So what is before you is whether or not to approve conditions 1 through 28 and if you approve these tonight, then that is one of the conditions you placed upon Posey Solar back in August that will be satisfied and moving forward. I will also indicate that there have been a couple of questions posed to me in regards to the lawsuit. One of the agreements that Posey Solar and the remonstrators have entered into if these conditions are approved they are dismissing that lawsuit pursuant to a settlement agreement reached between them. The practice on any type of case is that if there is going to be a settlement, you get the settlement and then the release and then it is finalized. So in one sense this settlement, the release is the approval of these conditions. So I can tell you that if these are approved that lawsuit that was filed by the list of Posey County Landowners against the Posey County Commissioners and the Area Plan Commission will be dismissed and will be no more. I want to go ahead and anticipate the questions in regards to a monetary aspect of any type of lawsuit. I will tell you that the lawsuit is not costing the Posey County taxpayers a dime. The Posey County taxpayers are not contributing to any financial settlement of that particular lawsuit. The lawsuit is solely in terms of any financial obligations is between Posey Solar and the Remonstrators, but there is also I believe will be a contribution from the County's insurance carrier. Not from the taxpayers but from the insurance carrier. This is how these types of suits even if you are involved in a car accident and you are sued for that. This is how that works. The county was sued. The county carries insurance for such a circumstance. Under that insurance policy our insurance carrier has a duty to defend the county when it is sued in certain circumstances. The County Commissioners said we are going to turn this into our insurance so they can exercise their duty to defend. The County's insurance carrier hired Kightlinger and Gray with Jeff Lowe as the lead attorney. He is out of New Albany. Now Jeff was the County's attorney. In our policy there is a deductible that is paid by the County. That is paid regardless of win, lose or draw. That deductible, just like in our car insurance or health insurance, we pay deductibles and that is paid by the County. I do not know the exact

amount because that is through the County Commissioners. I know there is concern of do we have to pay for any lawyers. Well we didn't but then we did by virtue of purchasing an insurance policy. But we are not paying our attorney, we are paying the deductible to make sure we have representation. I know I have heard second questions about whether this is costing anything. I just want to tell you that it is not, my understanding is in any financial settlement, the insurance company may be contributing money to that settlement. But I will tell you that is not uncommon. Same thing as if you were in a car accident, I have State Farm, if I am in a car accident and I am at fault State Farm has to defend me. I go in and I say it wasn't my fault, they still may say if we go ahead and pay \$5,000 now we, insurance company, may save \$20,000 in cost moving forward so we will offer \$5,000 it is taken and it's over, I walk away from it saying I wasn't at fault. Well I didn't pay anything. Insurance company looks at things at the bottom line. So maybe I jumped the gun here on the explanation. From a global perspective that is what we have going on here. If you approve the conditions this evening as I said, that gets that out of the way. Posey Solar will look towards the next step, which I assume is trying to get the proper permits, before they are allowed to get an Improvement Location Permit.

MARK SEIB: Thank you Trent. That is the best I have heard yet as far as an explanation. This is the final leg of the August meeting and being able to complete this Final Development Plan we did in August.

ATTORNEY TRENT VAN HAAFTEN: This is a public meeting.

MARK SEIB: We usually have a public portion in our meetings where citizens can come up and make a statement or whatever. This doesn't necessarily fall into that category but I am going to go ahead and allow it. If there is someone here that is wanting to speak concerning these conditions of the Final Development Plan please come forward. Hearing none, it is up to the board to discuss. If there are any questions, we have the two attorneys here representing the two different groups as well.

JOE MARVEL: I have one question on condition 25. What kind of conditions precedent would they be coming to us to get relief from? Because it says non-participating owners can basically go to the Area Plan. I just want to know what we are talking about. Is it like trucks getting there too early? I couldn't see too much in there that would apply.

ATTORNEY TRENT VAN HAAFTEN: The ordinance sets up with a project like this and within that what we have gone through there is a Transportation Plan, a Decommissioning Plan everything that has come into the Final Development Plan places certain restrictions on this project. I think there are time frames as far as construction, so if they are starting too early or staying too late that is a complaint that can be brought to the Area Plan.

JOE MARVEL: Is there any step before bringing it to the Area Plan? That is kind of what I am curious about.

ATTORNEY TRENT VAN HAAFTEN: We can get a complaint, Area Plan is going to have to look into it. So it is probably going to contact the project, talk to the site boss to see if this is

happening and can this be fixed. Then you fix it without going further. So it is at the Area Plans' discretion in terms of acting on or how far you act on any type of complaint.

MARK SEIB: Any further questions or discussion?

RANDY OWENS: Given the 30 day limit here and the fact that we only meet every 30 days, then Mindy would have the power to investigate it and try to resolve it before we would have a meeting, right?

MARK SEIB: Correct, there would be regular sight meetings with Mindy, with our engineer that we hired, Barry Tanner and then if it gets to be something else then they would draw me in. Those are ongoing during construction. So you are absolutely right Randy that Mindy would have time to do it and if it was significant then it would be moved to the board to decide.

ATTORNEY TRENT VAN HAAFTEN: I would like to add so everyone understands this goes beyond the construction period. So even after construction is over and everything is operating. If there are things in violation of what they are required to do then that can be addressed also.

MARK SEIB: Any further questions or discussion?

ANDY HOEHN: So this is concerning the 28 conditions, with condition 24, 25, 26, 27 and 28 being summarized differently than the original 24, 25, 26, 27 and 28?

ATTORNEY TRENT VAN HAAFTEN: What do you mean being summarized? Conditions 1 through 23 were a part of the Preliminary Development Plan. It was at the Final Development Plan and at public hearing they brought or started discussing the additional conditions. So 24 through 28 are those additional conditions. You can call this updated conditions or amended conditions. The substance of 1 through 23 really has not changed but we did update the grammar and added better referencing in defining a non-participating landowner. But 24 through 28 are the new conditions that are before you which have not been before anything that has been approved by APC.

MARK SEIB: Any further discussion or questions? Any action?

Andy Hoehn made a motion in the affirmative to recommend approval of conditions 1 through 23 amendments and conditions 24 through 28 as listed in the Final Development Plan. Keith Spurgeon seconded the motion. **Roll Call Vote (5-1) Yes. Motion carried.**

SBDM KOESTER MINOR SUBDIVISION:

DOCKET NO: 22-16-S-APC

APPLICANT: Fred J. Kuester - Surveyor

OWNER: Steven A. Koester & Bridget M. Koester and David W. Koester & Melissa A. Koester

PREMISES: Part of the Southeast Quarter of the Northwest Quarter of Section 11, Township 5 South, Range 12 West, lying in Robinson Township, Posey

County, Indiana. More commonly known as Blake Road, Wadesville, Indiana. Containing 4.00 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

APPLICANT/OWNER OF THE ABOVE DESCRIBED PROPERTY HAS REQUESTED:

Approval of Minor Subdivision Plat in an R-1 Zoning District under The Subdivision Control Ordinance of the City of Mount Vernon, the Town of Cynthiana, the Town of Poseyville and Unincorporated Posey County.

Mr. Seib confirmed no board members had any conflict of interest.

Mr. Seib confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

MARK SEIB: Who is here wishing to speak for the application?

DAVID KOESTER: 10200 John Will Road, Wadesville, Indiana. We are trying to sell two lots off of Blake Road. They will be two 2-acre lots.

MINDY BOURNE: We've seen this property before because he had to rezone first before we could do the Minor. This property has been split in the past as an Exempt II and that has been maxed out of allowable lots to be split anymore. Any further splits have to go through a Minor Subdivision process. He is proposing to create two new lots and they are each two acres in size.

MARK SEIB: Any questions for Mr. Koester? With none, you may have a seat. We will now open this application up for public comment. Is there anyone here wishing to speak for or against this application? Hearing and seeing none, we will close the public portion.

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

MARK SEIB: It is now up to the committee to discuss amongst themselves and take action as they see fit.

Motion was made by Randy Thornburg for preliminary approval and authorize Executive Director to give final approval after 30 days have elapsed for Replat 22-16-S-APC. Motion was seconded by Andy Hoehn. **Roll Call Vote (6-0). Yes. Motion carried.**

MINDY BOURNE: This replat has been approved, 30 days have to lapse and after 30 days they have allowed me to sign off on that plat.

DEVELOPMENT PLAN APPLICATION SECS TIER 2 (FINAL)

DOCKET NO: 2022-01-SECS-2-APC

APPLICANT: AstraZeneca

OWNER: AstraZeneca

PREMISES: Part of the Southeast Quarter of the Southwest Quarter of Section 2, Township 7 South, Range 13 West, lying in Black Township, Posey County Indiana.

More commonly known as 4601 Highway 62 East, Mt. Vernon, Indiana.
Containing 8 acres more or less. (Complete legal description is on file at the
Posey County Area Plan Commission Office).

NATURE OF CASE: The applicant requests Final Development Plan Approval to develop a Solar
Energy Conversion System (SECS) – Tier 2

Mr. Seib confirmed no board members had any conflict of interest.

Mr. Seib confirmed with Mindy Bourne that the applicant met all the requirements for
notification per the statute.

MARK SEIB: Who is here wishing to speak for the application?

ALEX BITTNER: 118 S. Eileen Street, Haubstadt, Indiana.

MICHAEL SMITH: 4107 E. Dogwood Way, Haubstadt, Indiana. We started the process right
when this group was being formed. We have 2 megawatts. We are adding 1 megawatt to finish
the process. It is 3 megawatts total. We only consume that power. We don't put anything back
on the grid. It's strictly to power production process on our facility.

MARK SEIB: Does anyone have any questions for them at this time? Again, this is all on your
property?

MICHAEL SMITH: Absolutely.

MARK SEIB: It is within the boundaries and fences of your property?

MICHAEL SMITH: It is in the roughly southwest corner where we use to have our research
building. We did that purposely because you can't really see it from any of the county roads.

KEITH SPURGEON: No major changes since the last time you were here?

MICHAEL SMITH: No. This construction is adding a megawatt and that will be our last add
under this permit. Particularly with the permit with CenterPoint Energy. We will do all
construction from the highway entrance as far as egress. We won't use any of the county roads,
we will use our own main entrance for trucks and that sort of thing. It's not that large of an
increase, so three or four semi loads and electrical contractors. We estimate maybe a couple of
month's construction once it gets rolling. We will start sometime in the May timeframe and
finish in July as far as construction.

ATTORNEY TRENT VAN HAAFTEN: This is an approval process. You can approve the
Final Development Plan and with any type of provisions or restrictions. You approved the
Preliminary Development Plan with the restriction that they obtain the proper permits from the
Indiana Department of Natural Resources. They have started that process, but it is not a quick

process. I know they provided me some information in regards to its on-going. They are essentially waiting on DNR to get back with them with a final decision on those permits. As you move forward, if you do move to approve this, I would recommend that you also make a motion to do so with the condition that they obtain all proper permits prior to applying for the Improvement Location Permit.

MARK SEIB: Any further questions? Hearing none, please have a seat. We will open this application up for public comment. Is there anyone here wishing to speak for or against this application? Hearing and seeing none, we will close the public portion.

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

MARK SEIB: This seems to be a good fit. It's on their property and doesn't intrude on any other public area. I drove down 62 in a semi and I had a hard time seeing it. I think it is very well placed and very well done.

Randy Thornburg made a motion in the affirmative to approve the Final Development Plan 2022-01-SECS-2-APC with the condition that they obtain all required permits. Andy Hoehn seconded the motion. **Roll Call Vote (6-0). Yes. Motion carried.**

MINDY BOURNE: You will have to get your permit before starting installation.

REPLAT TABLED FROM 11/10/22 MEETING:

DOCKET NO: 22-15-S-APC
APPLICANT: Greg Kissel – Kissel Land Surveying LLC
OWNER: Dane Michael & Erika Rose Maurer
PREMISES: Lots #45 and #46 in Woodstone Estates Phase IV of Section 13, Township 6 South, Range 12 West, lying in Marrs Township, Posey County, Indiana. Containing 2.041 acres more or less. More commonly known as 2641 & 2681 Pinewood Court, Evansville, IN. (Complete legal description is on file at the Posey County Area Plan Commission Office).

APPLICANT/OWNER OF THE ABOVE DESCRIBED PROPERTY HAS REQUESTED:

Approval of Replat in an R-1 Zoning District under The Subdivision Control Ordinance of the City of Mount Vernon, the Town of Cynthiana, the Town of Poseyville and Unincorporated Posey County.

Mr. Seib confirmed no board members had any conflict of interest.

Mr. Seib confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

MARK SEIB: Who is here wishing to speak for the application?

ERIKA MAURER: 200 Western Hills Drive, Mt. Vernon. My husband and I want to take Lot 45 and 46 and combine them into one lot.

MARK SEIB: Is there any utility easements or anything that has been addressed?

ERIKA MAURER: Yes, there are two easements that run in between the lots. One is with AT&T and with CenterPoint Energy.

MARK SEIB: Are those going to be an issue with what you are planning to do with the lot?

ERIKA MAURER: We are planning to move both easements between 44 and 45 to the south of our property.

MARK SEIB: Have you already started discussions with those two agencies?

ERIKA MAURER: Yes, I have quotes from both of the agencies and we are in the process of moving them.

MINDY BOURNE: When she originally filed the application, the plat from the surveyor did not show any easements. Then I received a call from AT&T and they tell me they have an easement running through those lots. We start looking into documents and found a recorded document that was done after the subdivision plat was approved. I think the plat was approved in 2014 and 2015 was the easement. I then contacted the surveyor and that was the reason this was tabled last month because Erika has been working hard to try to get all of that resolved. I believe German Township Water has been cleared.

ERIKA MAURER: Yes, they are cutting the water and capping it. They don't have to move it.

MINDY BOURNE: I believe you were able to get something from AT&T, but CenterPoint you are still dealing with.

ERIKA MAURER: I put in a lot of effort and finally got in contact with them. I have quotes from both. Once I pay in full, they will start their projects. I don't have a set timeline, but I talked to Mindy and I can get my surveyor to move the easements on my plat once I have paid in full. Then I am able to have a true replat.

MINDY BOURNE: They want to build their house in the center of the two lots. That was the other situation. Worst case scenario, if they did not get the easements moved or vacated, she would probably still want to combine those two lots. If she ever wanted to build an accessory building, a pool, it needs to be on the lot with your house. I told her she would probably want to move forward with that. She can't get anything recorded until we know if those easements are staying or moving. I told her it would be ok to go ahead and appear tonight to let the board know what is going on.

MARK SEIB: I think it would also be appropriate that when the motion is made that there be some kind of paperwork showing they are in agreement on the easements.

ERIKA MAURER: I've brought paperwork too that shows both of the quotes. I haven't paid yet. But we are committed to moving them.

MARK SEIB: And that's fine. But you still have to do it. We need some proof that has been done.

JOE MARVEL: The access to the subdivision off of St. Philips Road, that is where the easements are at, limits the subdivision access to the one off of Upper Mt. Vernon Road.

ERIKA MAURER: It is not a public access. There is a gate and it is locked at all times.

MINDY BOURNE: I was told when that subdivision was first created that is where the developer of the subdivision wanted them to come through. He didn't want them to come through the main entrance. It was a construction entrance.

ERIKA MAURER: And they still did until we bought it. We plan to remove the gate and there will be no access.

KEITH SPURGEON: Does she have to get the easements for the Replat... you advised her to do the Replat whether she did the easements or not.

MINDY BOURNE: She wants to get the lots combined. We are going to record one of these plats here. This one is really the accurate one with the easement running right through the two lots. If she truly gets that moved, then we don't want to record the plat right here. We want to show that the easements have been moved. I think the board can move forward approving this, but she couldn't actually get a plat recorded until that is all taken care of. We want to record the correct plat of where the easements truly are.

ATTORNEY TRENT VAN HAAFTEN: That is correct.

MARK SEIB: Any further questions? Hearing none, please have a seat. We will open this application up for public comment. Is there anyone here wishing to speak for or against this application? Hearing and seeing none, we will close the public portion.

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

Motion was made by Andy Hoehn for preliminary approval and authorize Executive Director to give final approval after 30 days have elapsed for Replat 22-15-S-APC subject to providing documentation of public utility easement modification. Motion was seconded by Randy Thornburg. **Roll Call Vote (6-0). Yes. Motion carried.**

MINDY BOURNE: They have given preliminary approval. Thirty days have to elapse before I can sign the final plat. However, we also have to receive the documentation. It could be longer than 30 days before I sign that plat. You can just communicate with me and let me know what is going on.

COMPLAINTS 607 E. 4th Street, Mt. Vernon, IN (Hazlett)
822 W. 3rd Street, Mt. Vernon, IN (King)
Luigs Road, Wadesville, IN (Hearten)
714 W. 6th Street, Mt. Vernon, IN (Cross)
10422 Blake Road, Wadesville, IN (Alvey)
600 Mill Street, Mt. Vernon, IN (Allen)
418 W. 8th Street, Mt. Vernon, IN (Stewart)
732 E. 3rd Street, Mt. Vernon, IN (Simpson)
520 E. 2nd Street, Mt. Vernon, IN (520 E. 2nd St. Land Trust)
727 E. 2nd Street, Mt. Vernon, IN (Bebout)
230 James Road, Mt. Vernon, IN (Cole)

MARK SEIB: 607 E. 4th Street, Mt. Vernon.

ATTORNEY TRENT VAN HAAFTEN: This is the pallet business. We filed the case and agreed to put it off until January. As long as they didn't operate in violation of the ordinance, this violation would be dismissed. We are still waiting until January.

ANDY HOEHN: Nothing seems to be going on at the property. They come in for a couple of days and go out for a couple of days. I haven't seen a truck or a pallet.

MARK SEIB: We will table that one until the next meeting.

MARK SEIB: 822 W. 3rd Street, Mt. Vernon.

ATTORNEY TRENT VAN HAAFTEN: This is one that I am still working on.

MINDY BOURNE: The recent photos show that there is still one vehicle back by the tree.

ATTORNEY TRENT VAN HAAFTEN: As I indicated to you before, this property owner's brother passed a couple of months ago and I am actually handling the estate. I believe a couple of the vehicles were sold. I will follow up and find out about this other vehicle.

Motion was made in the affirmative by Randy Owens to table the 822 W. 3rd Street, Mt. Vernon complaint until next month. Motion was seconded by Keith Spurgeon. **Motion carried.**

MARK SEIB: Luigs Road, Wadesville.

ATTORNEY TRENT VAN HAAFTEN: This is the one they had a camper parked and were living in it. The property owner was notified. He ended up in jail. The case went to a hearing on November 18. The courts found in Area Plan's favor. He was fined \$100 and also awarded attorney fees in the amount of \$617.50 for a total judgement of \$717.50. The ordinance provides penalties. He can be fined a certain amount for each day. That is how we always proceed. He is in jail, so he didn't have the ability to move the campers. I can't tell by the photos if they have been moved. The photo on 12/2... the prior photos were from the roadway.

JOE MARVEL: You can see his hook up. So he is still hooked up.

ATTORNEY TRENT VAN HAAFTEN: We approach these in regards to fines. Your hope is that he brings it into compliance and we are done. There are opportunities in terms of filing actions in court to get injunctions, restraining orders or actual action of removing things. I don't know how deep you want to go in terms of those types of situations and expense. It takes time, but in this circumstance the judge did fine him, ordered attorney fees and that is where we are at. He is in jail, so I can't sit here and tell you he left court and went to move everything.

JOE MARVEL: Is he in jail on an unrelated matter?

ATTORNEY TRENT VAN HAAFTEN: Yes, on an unrelated matter.

MARK SEIB: Do we know how long he will be in jail?

ATTORNEY TRENT VAN HAAFTEN: I think it was around 90 days and I believe he still had another month to go at the time of our hearing in November. So he should be getting out soon. I can tell you that this case has been concluded by virtue of going to court and getting a judgement against him. Now did that conclusion mean coming into compliance? No.

MARK SEIB: The judge didn't order him to move anything?

ATTORNEY TRENT VAN HAAFTEN: The judge didn't have the authority. We had a discussion about that and I told the judge that is the difficulty of this case. In a normal situation a person would have walked out of court and went home and moved it. But he was transported back to jail.

RANDY THORNBURG: I think we should give him an opportunity to move it since he is incarcerated.

KEITH SPURGEON: After he gets out of jail, can we contact him and give him a certain amount of days to get it moved or we will consider issuing fines?

ATTORNEY TRENT VAN HAAFTEN: This one has been concluded. But you can start a new file. If it is still there, you can start the process again by notifying him and tell him he needs to come into compliance. Maybe as a result of all this he would, if he doesn't then you call him back.

MARK SEIB: So I guess the way we can work this is we have on record who filed the complaint?

ATTORNEY TRENT VAN HAAFTEN: Yes, but I will tell you there is a house and these RV's were in the lot next to it, they are both now owned by Mr. Hearten. The person living in the house at the time was the one that made the complaint against Mr. Hearten. That person is no longer living in the house. The reason Hearten is in jail because of conflicts between those

two. So that original complainant is gone. I think Hearten has another individual living there and maybe that will be where he goes when he gets out of jail.

MARK SEIB: So I guess we will have to wait until another complaint is filed. Like you said this case is closed and the judge made a monetary judgement. We just didn't get the vehicle moved.

KEITH SPURGEON: Can you please explain to me this monetary judgement from the judge.

ATTORNEY TRENT VAN HAAFTEN: The penalty under our ordinance is essentially fines. There is a certain amount the judge can fine them, can fine them per day, fine them in a range for each day of violation. The judge fined him \$100 dollars and ordered the attorney fees be paid, so the total amount of judgement is \$717.50.

KEITH SPURGEON: So it was a flat fee and not a per day kind of fee as long as the trailers are there.

ATTORNEY TRENT VAN HAAFTEN: No this case is concluded.

ANDY HOEHN: What is the level of our fine assessment, is it \$100.00 dollars or what? We are limited by our ordinances in the city.

ATTORNEY TRENT VAN HAAFTEN: \$25 up to \$500. It can be fined up to \$500 each day per violation.

MARK SEIB: We have a range that can be set. There is no set fee with this.

ATTORNEY TRENT VAN HAAFTEN: Both your criminal statute as well as your infractions, ordinance violations basically say you can be fined up to a certain amount.

ANDY HOEHN: Per violation, per day?

ATTORNEY TRENT VAN HAAFTEN: Yes, each day there is a violation.

JOE MARVEL: But the judge does what the judge does.

ANDY HOEHN: Do we need to look at changing our fine structure potentially?

KEITH SPURGEON: Could the judge have said it will be an X amount of dollars until it is moved?

ATTORNEY TRENT VAN HAAFTEN: No he couldn't have. Because once you say you have violated the law and he says no I didn't. You go to court. It is adjudicated, each side a say and then the judge makes his decision. You violated the law. The judge could say the evidence was the first day of violation was July 1 and you remained in violation for 60 days so I am going to fine you \$100 dollars for each of those 60 days and impose that fine against them.

KEITH SPURGEON: He can't carry forward and say it will continue as X amount of dollars per day until it is moved.

ATTORNEY TRENT VAN HAAFTEN: Correct.

KEITH SPURGEON: He can't do that.

ATTORNEY TRENT VAN HAAFTEN: As I said in the beginning, if you guys want to go further in, you can file injunctions, you can file a restraining order. That could basically let the court order to stop something or you do something. That is a more involved process. Anytime you go down that road, in this particular case, when we started we didn't think the guy would be in jail. In any of these complaints you hope they come here, you listen and you discuss it. I knew once I went to court and the guys in jail.....

KEITH SPURGEON: I guess he hasn't paid the fines yet? What happens now if he doesn't pay the fine?

ATTORNEY TRENT VAN HAAFTEN: It is like a judgement for past due rent. We can pull him back into court for preceding supplemental. Find out if he is working and garnish his wages all of those types of things are ways to collect the funds.

MARK SEIB: My feeling is let's wait until he gets out of jail and see what he does. Maybe with that being said have Trent send a letter saying if he does as asked and pays the fines or sets up a payment plan we won't take further action on this matter. I don't believe you're going to get the monies as soon as he walks out of jail.

ANDY HOEHN: Are we in the circle of discussion on whether he pays the fine or not. The fine doesn't come this way anyway does it? To require him to pay the fine is kind of mute to us what we are asking for.

ATTORNEY TRENT VAN HAAFTEN: The fine is all part of it. He is ordered to pay \$717.50.

ANDY HOEHN: But that is between him and court that is not between us and him?

ATTORNEY TRENT VAN HAAFTEN: That is the total judgement. So we can force that total amount. Because it is an Ordinance Violation that \$100.00 would not go to the state it would stay with the county. Just like the attorney fees would all go back into the county coffers.

ANDY HOEHN: I guess in my thinking, the long and short of it I guess I am not too interested in being involved in whether he pays the fine or not. I would agree with a letter saying as soon as we can get an address to move the stuff. That what we want. If he wants to pay the fine, frankly I don't care.

ATTORNEY TRENT VAN HAAFTEN: My recommendation is after the first the year, sometime when he is out, somebody go by and see if it is still sitting there. If it is still sitting there then we begin the process again.

A motion was made in the affirmative by Randy Thornburg to wait until January to see if campers are moved. If not moved then have Trent send a letter to start the process. Motion was seconded by Andy Hoehn. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: 714 W. 6th Street, Mt. Vernon, IN

MINDY BOURNE: This is an old one. At the last meeting we had reported that the camper was gone. However, this was the one I said then that I had received word that it had been moved to another location that a complaint was filed on and owned by the same property owner. This will actually have to be tabled to next month because I haven't received a response back yet from property owners.

A motion in the affirmative was made by Keith Spurgeon to table this complaint until next month. Motion was seconded by Randy Owen. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: 10422 Blake Rd, Wadesville, IN

ATTORNEY TRENT VAN HAAFTEN: I sent a letter out on November 22 advising him of violation at the address provided to me on the complaint and advising him to be here this evening.

MARK SEIB: Is Mr. Trevor Alvey here? Is anyone here to speak on his behalf? Seeing and hearing no one coming forward. Mr. Seib conferred with Mrs. Bourne and Mr. Van Haaften that they had not heard from Mr. Alvey or a designated representative since the November 22nd letter had been issued. Is there discussion among the board?

RANDY THORNBURG: It is my understanding that Mr. Poe has sold the property to him, so he is no longer subleasing. I went by there yesterday and it had been cleaned up considerably.

MARK SEIB: With that being said I guess we need to verify all of that information. Is it the pleasure of the board to table this until next month to give the office a chance to check things out?

A motion was made in the affirmative by Joe Marvel to table the issue to allow time to get pictures and for the property owner to respond to the November 22nd letter. Motion was seconded by Randy Thornburg. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: Next item is 600 Mill St., Mt. Vernon.

MINDY BOURNE: This is an old complaint and I have in my notes from last meeting to table it until the January 2023 meeting.

MARK SEIB: Moving on to the next item is 418 W 8th St., Mt. Vernon

MINDY BOURNE: This is an old one.

Mr. Seib requested that in the future the office personnel indicate on the list of complaints which are old complaints with an asterisk.

MINDY BOURNE: I have been trying to get service to the owners. I still have not received any response and the date given to them to contact me has lapsed. As of 12/02/2022 the camper is still there.

MARK SEIB: Is there anyone here wishing to publicly speak concerning the 418 W 8th St? Hearing and seeing none and commenting that the director had received no communications we will close the public portion. We will now open up to discussion by the board.

JOE MARVEL: At this point can we set a fine per day while both campers are there?

ATTORNEY TRENT VAN HAAFTEN: Unfortunately it has to go through the courts.

MARK SEIB: However when we go through the court we can ask the court to set the fine in that manner.

JOE MARVEL: Trent, does the court look to you for guidance to say the Area Plan is asking for so much money per day as a fine.

ATTORNEY TRENT VAN HAAFTEN: I haven't in the past told someone this is what we want. We tell them what the range is. If you get to the point that the court rules in your favor, then they will ask what it is that you want penalty wise. At that time we can say \$25 a day for ten days or whatever that may be.

JOE MARVEL: I feel we should move it along instead of tabling it. I make a motion to have Attorney Trent Van Haaften pursue action.

Motion was seconded by Andy Hoehn. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: Next item is 732 E 3rd St., Mt. Vernon

ATTORNEY TRENT VAN HAAFTEN: This is one that is owned by the Allyn Agency, managed by someone and rented. I thought that they had things somewhat squared away. I don't see that we have any updated photos. I have driven by there and I know a vehicle had been moved over to an area where there was an old driveway and my recollection there had been some cleaning up. I know I talked to one of the agents of the Allyn Agency and they said they had contacted the property manager as well as the street department to try to get some of that trash cleaned up. I also assume they told them to move the vehicle. I believe the photos earlier, had the vehicle up close to the house.

ANDY HOEHN: When I went by the vehicle had been moved to the southeast side and someone was still living in it.

MARK SEIB: Anyone in the crowd here to speak about this complaint.

JOE MARVEL: I have a conflict of interest.

ATTORNEY TRENT VAN HAAFTEN: I will ask the board to get updated photos and give me a chance to call them to see what they have done. I know some of the trash was gone. I was not aware of the living in the van.

MINDY BOURNE: I believe the original complaint stated about someone living in the van.

MARK SEIB: What is the pleasure of the board? Do we table this and give Trent more time to research this.

A motion was made in the affirmative by Keith Spurgeon to table this complaint until next month to give Trent Van Haaften time to pursue this complaint. Motion was seconded by Andy Hoehn. Board member Joe Marvel had a conflict of interest and did not vote. **Roll Call Vote (5-0) YES. Motion carried.**

MARK SEIB: 520 E 2nd St., Mt. Vernon

MINDY BOURNE: This is a new complaint with two campers parked in the back yard. On 11/21/2022 at 10:59 a.m., Anna Stillwagoner called the office to say she received the certified letter and the allegations are false. She will attend the December 8, 2022 APC meeting and bring photos to show the inside of the camper is empty.

MARK SEIB: Is that person here? Please come forward to the microphone. State your name and address where you live please for the record.

ANNA MONKS: 827 E 2nd St., Mt. Vernon.

MARK SEIB: Can you give us more detail and tell us more about this.

ANNA MONKS: No one lives in the campers. There were two, now there is only one. I brought photos to show that it is not even livable. Someone broke in and busted the door and the lock and the window. I sold one and moved the other one from the back to the side driveway. That way it can be seen from the street and no one can break into it anymore.

MARK SEIB: So it is parked in the rock and not in the grass?

ANNA MONKS: Yes there is gravel there.

Mark Seib conferred with Mrs. Bourne that there were no other issues with the complaint.

Mrs. Bourne stated other than someone living in the campers. Mr. Seib confirmed with Mrs. Monks that no one was living in the remaining camper and verified this with pictures and stated that no one has her permission to live in it.

MARK SEIB: We will record the two photos as Exhibit 'A'. Is there anything else you would like to add?

ANNA MONKS: No sir.

MARK SEIB: Are there any questions or comments by the board?

KEITH SPURGEON: Is the camper hooked up to the electric or water?

ANNA MONKS: No sir.

ATTORNEY TRENT VAN HAAFTEN: Are you 520 E 2nd Land Trust?

ANNA MONKS: Yes, my maiden name is Stillwagner, my married name is Monks.

ATTORNEY TRENT VAN HAAFTEN: But I think on the property record it shows the owner as 520 E Second St Land Trust, it doesn't show that it is owned by you.

ANNA MONKS: When I went to pay the taxes, my name was on their as well.

ATTORNEY TRENT VAN HAAFTEN: Are you buying the property on contract?

ANNA MONKS: Yes sir.

ATTORNEY TRENT VAN HAAFTEN: That explains it. Thank you.

ANDY HOEHN: Is there a plan to keep the camper? What is the future for the camper?

ANNA MONKS: My plan was to remodel the entire house. As soon as I paid the \$1500 for the electric work someone broke in and stole all of the electricity out of there. So I am starting over from scratch. My plan was to remodel it. But with everyone breaking in and stealing out of my garage, my home and my camper. All of the electrical supplies and my tools have been stolen. I have made police reports about that.

MARK SEIB: Does anyone have any further questions for her? Hearing none, you may have a seat. What is the desire of the board?

A motion was made in the affirmative by Andy Hoehn to call this complaint complete. Motion was seconded by Randy Owen. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: 727 E Second St, Mt. Vernon

MINDY BOURNE: This is a new one, however I cannot get service on the property owner. This just went out this week by sheriff. We will need to table any action until January.

MARK SEIB: Is there anyone here wishing to speak on this complaint? Seeing and hearing none, Mindy has asked for this complaint to be tabled.

A motion was made in the affirmative by Randy Thornburg to table this complaint until the January 2023 meeting. Motion is seconded by Andy Hoehn. **Roll Call Vote (6-0) YES.**
Motion carried.

MARK SEIB: 230 James Rd., Mt. Vernon

MINDY BOURNE: This is a new complaint. It concerns additions being built and no permits being obtained. 11/17/2022 11:40 a.m., George Cole came into the Area Plan Commission Office and said he has not changed the footprint of the home and no additions were built and he has replaced bad walls on the porch and added siding. I asked that he attend the Area Plan Commission meeting on December 8, 2022 at 6:00 p.m. He said he would and will bring photos to prove his case.

MARK SEIB: So he is stating he was just doing repairs?

GEORGE COLE: 3105 Curtis Rd., Mt. Vernon. I own the property we are talking about.

MARK SEIB: Is this rental property?

GEORGE COLE: No it is not rental property? My son had went through a divorce and I bought it a long time ago. It was a pretty bad divorce and he needed a place to live. I told him that we can fix this up. He is a volunteer fireman for Black Township and he went through a pretty bad divorce with his wife of 22 years. They had children and everything. I told him, son we can get this house up where you can live in it until we see what is going on. We replaced the windows. At first I asked my son since he was on the volunteer fire department, I said we won't need a building permit. We both talked about this. I said because all we are doing is replacing what is bad. So we replaced the windows and started on the siding. I then received a certified letter saying stop all work. I didn't know exactly what that was all about. The reason I received a certified letter was his wife had complained to the Area Planning that we were working on the house. I mean she is just furious with him. And it wasn't his fault with the divorce. So I stopped completely. I mean it has been 24 days since we got the letter. I came in the Area Planning trying to find out what the problem was. I knew a building permit was if you were adding on a room or building a new home on property. All we were doing was replacing what was bad so he would be able to live in the house. I have pictures of when we started because the insurance company asked for pictures. I am sure you guys have already took pictures. I would like to present them to the board.

MARK SEIB: How many pictures do you have there?

GEORGE COLE: Here is a copy of my property card which shows the house was built in 1938. Then here is a picture of the home and a picture of the backside and then one of the side of the home.

MARK SEIB: So you have three pictures and a copy of your property card so we will call them Exhibit 1, 2, 3 and 4.

RANDY THORNBURG: Mr. Cole, do I understand correctly that your sons' ex-wife filed the complaint?

GEORGE COLE: Yes that is correct.

ANDY HOEHN: Is that Katherine?

GEORGE COLE: Yes it is.

RANDY THORNBURG: Do they have any kids?

GEORGE COLE: He has three children by her. Two have moved off and are older but he does have a daughter that they share custody of.

MARK SEIB: I have a question for Andy. Does the City have a building inspector that has to be involved when ever getting a permit for any remodeling or anything?

ANDY HOEHN: No, actually we dropped all of that. If you do not change the footprint, you do not have a problem. It is between you and your contractor.

MINDY BOURNE: They actually filed a complaint with the Building Commissioners office too, isn't that correct Becky?

BECKY WOLFE: Yes,

MINDY BOURNE: I never heard what happened with that.

BECKY WOLFE: Actually Byron Sanders went out and issued a stop work order for them.

MINDY BOURNE: I remember Byron went out, but I never heard what had happened with that.

GEORGE COLE: I would like to apologize to the council. I honestly did not and all the older gentlemen that I talked with never heard of an Improvement Location Permit. I never heard of it. Here I am 70 years old. I knew about a building permit and we were not adding on. You can see in the pictures the siding was slipping and the windows themselves, this was built back in 1938. These were the old windows that were built in the house. We just replaced with some new windows.

RANDY THORNBURG: So you talked with Ed Batteiger our Building Commissioner?

GEORGE COLE: I did not talk to the Building Commissioner. At that time I went down and talked to Mindy Bourne.

RANDY THORNBURG: Since Byron stopped the work, you haven't spoken with him?

GEORGE COLE: No.

MARK SEIB: Are there any other questions for this gentleman? You may have a seat. Is there anyone else here wishing to speak on this matter? Seeing and hearing none. Obviously this is not an APC issue, it is a Building Commission issue. He can get it straightened out and get permit from Ed Batteiger. This complaint has been satisfied.

A motion was made in the affirmative by Andy Hoehn to dismiss this complaint. Motion was seconded by Joe Marvel. **Roll Call Vote (6-0) YES. Motion carried.**

MARK SEIB: We have a list of people that deal with Master Plans that was put together by the Economic Development Partnership. We sent out correspondence to them as of yesterday asking to have their response back by January 12, 2023. From that point we will need to open them. I have had some discussion with the County Council. Once we open them, I would like for us to look at them and maybe pick one or two, or whatever the board would like to do, and then present it to legal for them to review and make sure they are legit. It will also have to be submitted to the County Council for their motion to fund it. I believe the County Council is on board with that. Area Plan is the ones to open it. We are not sure what it is going to cost. I am asking that we set a date to open them up. I am not calling for a special meeting. It will be to open the contracts and make a recommendation of one, two or whatever we want. It will be at something like 4:00 on whatever date you would like. It would be sometime in January after the 12th. I was thinking something like the 17th. I am asking that this date be set for opening and then the new board would be there to address the issues of what they would like to do.

A motion was made in the affirmative by Joe Marvel to appoint January 17, 2023 at 4:00 p.m. as the date and time to open the bids. Motion was seconded by Keith Spurgeon. Motion carried.

MARK SEIB: We will need a core committee to review the maps, seeing where we want to make some growth and have expansions through this whole process with the Master Plan. The core committee would then pass it on. We hope this can be done in about two months' time. I would like to ask the board to grant me the authority to find these people and present them to you at the next meeting in January for the new board to accept those as the core committee. I am looking for a realtor, somebody from the schools, people from the APC and BZA, maybe the sheriff... a group of people that have the qualifications. I will also ask the County Council for an elected official. With the Area Plan, we have to make sure we don't exceed the quorum. How does the board feel about granting me the authority to find these people and bring them to you for approval?

A motion was made in the affirmative by Andy Hoehn to grant approval to Mark Seib to put together a core committee. Motion was seconded by Keith Spurgeon. Motion carried.

MARK SEIB: Randy Thornburg, thank you for serving.

RANDY THORNBURG: It has been good serving with everybody.

MARK SEIB: This year has taken a lot of time. I greatly appreciate you staying with it and being a part of it. I thank everyone for attending all of the special meetings that we had. They were long and hard and there were some hard decisions being made. Dave Pearce will be leaving as well. We will have two new members coming on the board next year.

DIRECTOR'S REPORT: None

APPROVAL OF PAYROLL AND BILLS: A motion was made in the affirmative by Joe Marvel and seconded by Keith Spurgeon to approve payroll and bills. **Motion carried.**

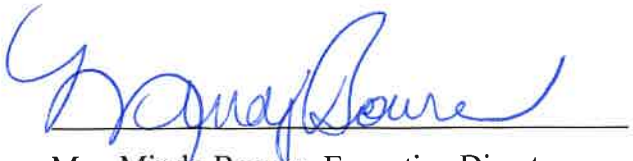
REPORT OF COLLECTIONS: A motion was made in the affirmative by Randy Thornburg and seconded by Joe Marvel to approve collections. **Motion carried.**

CITIZEN CONCERNS: None

Andy Hoehn made a motion to adjourn the meeting at 7:41 p.m.



Mr. Mark Seib – President



Mrs. Mindy Bourne, Executive Director

Exhibit A
2 photos

580 E 2nd St.



1 of 2



2 of 2