

MINUTES

POSEY COUNTY AREA PLAN COMMISSION REGULAR MEETING

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

JANUARY 12, 2023
6:00 P.M.

Attorney Trent Van Haaften administered the Oath of Office for the one-year appointments of Andy Hoehn, David Dausman, Greg Newman and Mike Baehl to the Area Plan Commission.

MEMBERS PRESENT: Mr. Mike Baehl, Mr. Dave Dausman, Mr. Andy Hoehn, Mr. Joe Marvel, Mr. Aaron Neufelder, Mr. Greg Newman, Mr. Randy Owens, Mr. Mark Seib, Dr. Keith Spurgeon, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne –Executive Director, Mrs. Becky Wolfe - Administrative Assistant

MEMBERS ABSENT: None

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

ELECTION OF OFFICERS 2023: Mike Baehl made a motion in the affirmative to nominate Mark Seib for President. Motion was seconded by Andy Hoehn. Andy Hoehn made a motion to close nominations. Motion was seconded by Greg Newman. **Roll Call Vote (7-0) Yes. Motion carried.**

Mark Seib made a motion in the affirmative to nominate Keith Spurgeon as Vice-President. Motion was seconded by Randy Owens. Mike Baehl made a motion to close nominations. Motion was seconded by Andy Hoehn. **Roll Call Vote (7-0) Yes. Motion carried.**

COMMITTEE APPOINTMENTS FOR 2023: Motion was made in the affirmative by Andy Hoehn and seconded by Keith Spurgeon to accept the proposed list of Committee Appointments for 2023. Mark Seib and Keith Spurgeon were reappointed as Area Plan Commission Representatives on the Board of Zoning Appeals. **Roll Call Vote (8-0) Yes. Motion carried.** (See attached sheet of Committee Appointments for 2023).

ATTORNEY 2023: A motion was made in the affirmative by Mike Baehl and seconded by Randy Owens to retain Trent Van Haaften as the primary attorney for 2023. **Roll Call Vote (8-0) Yes. Motion carried.**

FEES 2023: A motion was made in the affirmative by Keith Spurgeon and seconded by Joe Marvel to accept the fees as presented for 2023. **Roll Call Vote (8-0) Yes. Motion carried.**

MEETING DATES 2023: Motion was made in the affirmative by Joe Marvel and seconded by Keith Spurgeon to leave the time of the monthly meeting at 6:00 p.m. on the second Thursday of each month. **Roll Call Vote (8-0) Yes. Motion carried.**

DESIGNATED NEWSPAPER: Keith Spurgeon made a motion to designate the Posey County News as media source for legal notices as well as other electronic means according to Indiana Law for 2023. Greg Newman seconded the motion. **Roll Call Vote (8-0) Yes. Motion carried.**

RULES OF PROCEDURE: A motion was made in the affirmative by Randy Owens and seconded by Mike Baehl to accept the Rules of Procedure as presented. **Roll Call Vote (8-0) Yes. Motion carried.**

SITE DEVELOPMENT PLAN:

APPLICANT: Justin Collins

OWNER: Posey Storage, LLC

PREMISES: Part of the West Half of the Southwest Quarter of Section 17, Township 4 South, Range 12 West lying in Robb Township, Town of Poseyville, Posey County, Indiana. More commonly known as 128 N. St. Francis Street, Poseyville, Indiana. Containing 3.22 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 Site Development Plans in an M-2 Zoning District under The Zoning Ordinance of the City of Mount Vernon, the Town of Cynthiana, the Town of Poseyville and Unincorporated Posey County.

MARK SEIB: Does anyone on the board have a conflict of interest?

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

MARK SEIB: Who is here to speak on this application?

BARRY TANNER: Tanner Engineering, 625 E. 8th Street. Justin Collins is also here and he is the owner. He is wanting to add a couple of new storage buildings. One is 50' x 35'. It will be a taller building. And a new 50' x 24', which will be similar in size in height as the existing storage buildings to the west there. Looking to also add... the kind of shaded area will be new grading and new rock to try to level things out a little bit more so these new buildings can be installed plus give a little more access there on the west side. The property line to the east of the existing storage building was a railroad right-a-way. That has been turned over to Justin. There is a ditch on both sides of that railroad right-a-way. By adding this new gravel we will be changing the drainage a little. That is the reason for the new hdpe culvert, the new 12" pipe to divert some of that water over to another ditch. He is currently working with Graber Buildings to get the buildings purchased and started. We haven't applied for the permits yet. So any motion today would have to be contingent on that. We are aware of that. The only light addition will be at the northeast corner of the existing storage barn on the bottom center of the page. There will be a directional light shining on the backside of the new building. There won't be any signage. It's less than an acre so we don't have to do the, I don't think it is called Rule 5 anymore, but that particular permit. If anyone has any questions, we would be happy to answer them.

MARK SEIB: Just so the board knows, they presented this before the BZA. The BZA approved it contingent upon the Area Plan approval.

MINDY BOURNE: We also had a Site Plan Committee Review Meeting on December 21. You have the report in your folder. As Barry just stated, they have not applied for their State Construction Design Release yet so any approvals we do will have to put that contingency that they have to get that before any Improvement Location Permit can be issued. On the second page of the Site Plan Committee Review Meeting Report, there are different things we have to address during the review meeting as far as utilities, parking, entrance, exits, setbacks, and landscaping, building specs. Basically we go through all of those questions and we answer those according to this particular project. So that is what you will see on the second page.

MARK SEIB: Is there anyone here wishing to speak for or against this Site Development Plan? Hearing none, we will close the public portion.

A motion was made in the affirmative by Andy Hoehn to approve the Site Development Plan contingent on Mr. Collins obtaining the necessary State Permits. The motion was seconded by Mike Baehl. **Roll Call Vote (8-0). Yes. Motion carried.**

Andy Hoehn made a motion to approve the Findings of Fact. Motion was seconded by Joe Marvel. **Roll Call Vote (8-0). Yes. Motion carried.**

MINDY BOURNE: This Site Plan has been approved contingent upon State approval. Once you get that and before you start construction, you will have to come into the office to get the Improvement Location Permit.

MINOR SUBDIVISION:

DOCKET NO: 22-17-S-APC

APPLICANT: David Esche

OWNER: David A. & Kathy Sue Esche

PREMISES: Beginning at the Southwest Corner of the Southwest Quarter of the Southwest Quarter of Section 10, Township 6 South, Range 12 West, lying in Robinson Township, Posey County, Indiana. More commonly known as 1920 Ford Road N., Mt. Vernon, Indiana. Containing 1.142 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 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.

MARK SEIB: Does anyone on the board have a conflict of interest?

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

MARK SEIB: Who is here to speak on this application?

DAVID ESCHÉ: 1920 Ford Road, Mt. Vernon, Indiana. My wife Kathy and I have set up an LLC for all of our farm properties. Our wish was to have our home and one acre of ground not be included in the LLC. Since it was that minimum amount that is why we are here.

MINDY BOURNE: I'll just give a little history. He has been here before. His first step was to rezone the property. There are different ways you can subdivide property. In order to do just one acre, he has to do what is called a Minor Subdivision. The first step with a Minor Subdivision is that the property has to be zoned Residential. This property was zoned Agricultural. So he first came before us to rezone the property from Ag to Residential. That has been done. Now the second step is to get the Minor Subdivision approved. Which is why he is here this evening. After this part he will actually be done. Anytime you subdivide property it falls under the Subdivision Ordinance and there are different ways you can do it.

MARK SEIB: With no further questions from the board, you may have a seat. We will now open this application up to the public for comment. Is there anyone here wishing to speak for or against this application?

EARL SCHROEDER: St. Philips Road. I was born and raised next to that gentleman's property and I am all in favor of what they are doing. More power to you and it is nice to have you as neighbors.

MARK SEIB: Is there anyone else wishing to speak for or against this application? Seeing and hearing none we will close the public portion.

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

MINDY BOURNE: You will also see a report in your folder for this one also. This is the Subdivision Committee that met on Tuesday, December 21. There wasn't much to write on this one. It is pretty simple. I think we stated everything already. Basically they wanted to divide residential away from farm ground. The proposed lot will be 1.142 acres. They had to rezone it first. Storm Water General Permit is not required. There were no comments from jurisdictions that were notified. In the Subdivision Ordinance, there's a list of different entities that we have to send notice to when we have these. So like fire departments, sheriff's department and different people like that. So that is what that statement means. They have to comment back to me if they have an issue with it or any comments. The committee recommends that this be approved.

A motion was made by Andy Hoehn in the affirmative for preliminary approval and authorize Executive Director to give final approval after 30 days have elapsed for Minor Subdivision 22-17-S-APC. Motion was seconded by Mike Baehl. **Roll Call Vote (8-0). Yes. Motion carried.**

MINDY BOURNE: Dave, after 30 days I can sign the plat and you will have to get it recorded.

REPLAT:

DOCKET NO: 22-18-S-APC

APPLICANT: Greg Kissel

OWNER: Karl A. & Dwight Baro

PREMISES: East Half of Lot 1 in Block 25 in Company's Enlargement to the City of Mt. Vernon, Indiana. Section 5, Township 7 South, Range 13 West, lying in Black

Township, Posey County, Indiana. Containing .450 acres more or less. More commonly known as 1309 & 1329 N. Locust St., Mt. Vernon, IN 47620 (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 of a Major Subdivision in a RT 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.

MARK SEIB: Does anyone on the board have a conflict of interest?

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

MARK SEIB: Who is here to speak on this application?

KARL BARO: 11347 Lower Mt. Vernon Road, Evansville, Indiana. We bought the two lots and we want to replat them into one lot for future building so we can satisfy the offsets from the property lines.

MINDY BOURNE: He is absolutely correct. If they want to build something and they want to build in the middle, they can't do that unless they go through the process like this. This will give them more acreage so they can meet setbacks, lot coverage. The way they are platted now will limit what you can build there.

MARK SEIB: Are there any questions from the board? Hearing 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 none, we will close the public portion.

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

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

MINDY BOURNE: There is a Subdivision Committee Report. It is the same situation with a Replat. It is called a Replat because it is already a platted subdivision. Now they want to change that. Anytime you change a recorded platted subdivision it has to come before this body to change it. So it is called a Replat. The Subdivision Committee did not have any concerns with this one.

A motion was made by Joe Marvel in the affirmative for preliminary approval and authorize Executive Director to give final approval after 30 days have elapsed for Minor Subdivision 22-18-S-APC. Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion carried.**

AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF MOUNT VERNON, THE TOWN OF CYNTHIANA, THE TOWN OF POSEYVILLE AND UNINCORPORATED POSEY COUNTY:

The Town of Poseyville proposes to amend the Ordinance by deleting “Residential Storage Structure” as a Special Exception Use within the Town of Poseyville under Section-153.147(B) (14) Use Unit 2 Area-Wide Special Exception Uses, Section 153.270-Definitions, and Appendix A, footnote “w” of the Ordinance.

ANDY HOEHN: Is there anyone from the Town of Poseyville here to represent this?

MARK SEIB: We have Mike Baehl here from the Town of Poseyville.

ATTORNEY TRENT VAN HAAFTEN: We have the County Zoning Ordinance. The Town of Poseyville, the Town of Cynthiana and the City of Mt. Vernon all adopted it. It is up to their individual governing bodies... they have the opportunity to amend it such that a section only applies... that provision only applies to that particular jurisdiction. Back in 2014 the Poseyville Town Council passed that the residential storage section could apply in a particular manner just in Poseyville. It wouldn't apply to anyone else. Mt. Vernon did something very similar just to apply to the City of Mt. Vernon. Now what the Town of Poseyville has done is they said they no longer want that. They are basically proposing an amendment to the Zoning Ordinance to delete what they approved back in 2014. When you amend the Zoning Ordinance it can be initiated by any commission, the city or those two towns. Ultimately it has to be approved by the APC and then again approved by the legislative body. Last year or the year before we dealt with the proposed amendment with the Solar Ordinance. Because it was part of the entire Ordinance it came to us and it also had to be approved by the County Commissioners. In this particular situation, the Town of Poseyville has passed an amendment to apply to Poseyville in this regard. Then it was sent to us, the APC, for consideration. If you approve what they have sent to us, then it goes back to them and it is basically done and it is amended. You also have the right to say we want to change what you've sent to us. If you agree to change what Poseyville sent, it goes back to Poseyville. Poseyville can then say ok you've sent us this, we like it, we adopt it and we are done. Or they can say no we reject that and it is kind of back and forth. In this situation they adopted an amendment to send to us. I looked at it. Not knocking anything, but I think the language should be a little different. It should be a little clearer in terms of what is taking place. I've prepared a proposed language for this board. If you adopt it to send back to Poseyville, which I hope, it doesn't change anything that Poseyville is after. It just makes it a little clearer in terms of exactly what they are doing. That is where we are at. The Town of Poseyville said we want to change the Ordinance that only applies to our jurisdiction, so APC here is our proposed amendment. It is now up to you to say ok I will take that, send it back and it is done or to say we want to change what you sent us, or tweak it, and send it back to you to take a look at our language. If the Town of Poseyville takes it up and adopts that, then they are done. The Ordinance would be amended on this just as it applies to the Town of Poseyville. It doesn't impact Mt. Vernon nor does it impact anywhere else.

ANDY HOEHN: Would current residential storage structures be grandfathered?

ATTORNEY TRENT VAN HAAFTEN: They would be. Basically anytime that you have done something in which it is legal when I've done it, now you've changed the law, it is grandfathered in. If you had a location that had a residential storage structure on it, which fell in while it was ok, and then you turn around a year later after the change and want to do something else like add another one, no you can't add another one. If it is sitting there and it was legal when it was put in, it is legal.

ANDY HOEHN: What if you came into a property that had a home and a separate storage structure and you tear the home down, is that storage structure now valid? Would you have to tear it down too?

ATTORNEY TRENT VAN HAAFTEN: I would have to ask if it is still a residential storage structure because you don't have a residence there.

ANDY HOEHN: I was hoping someone would be here tonight. I think we should push this back.

MIKE BAEHL: I'm here to represent the Town of Poseyville. I am the President of the Poseyville Town Council.

ANDY HOEHN: What is the answer to the question?

MIKE BAEHL: We want it the way it is written. We will look at what Trent has. But we want to put a storage unit on a lot, we want a house there.

ANDY HOEHN: If I buy a property that has a storage building and a house and the house is torn down, what about the storage structure?

MIKE BAEHL: That's a good question.

ATTORNEY TRENT VAN HAAFTEN: My initial take without diving into it would be the structure is still ok.

ANDY HOEHN: I think there is more homework that needs to be done with changing this. I would like to see it go back to Poseyville and whoever their legal person is take a look at it. I think it's a little premature yet.

RANDY OWENS: You could have a clause that if the residential structure is torn down you have x period of time to build another one or the storage facility has to be torn down.

ANDY HOEHN: I don't want to dictate to them what they want. I would rather it go back to them and they come back. I would move to table this.

KEITH SPURGEON: Is it fair to say that the intent was probably not to have anybody have to tear theirs down that already has one? You were probably looking at new stuff.

MIKE BAEHL: Yes. We can look at it again. I don't have a problem tabling it.

A motion was made by Andy Hoehn in the affirmative to table this proposed amendment until the next meeting. Motion was seconded by Mike Baehl. **Roll Call Vote (7-0) Dave Dausman abstained. Yes. Motion carried.**

MARK SEIB: Unless we vote on the proposed language, we can't send it to Poseyville. Is that correct, Trent?

ATTORNEY TRENT VAN HAAFTEN: If we table this, Mike will take this back for them to look at it. They can have a head start on reviewing it. If they want to add something different, or add to it, then they can let me know. Then what I would present to you at the next meeting would be whatever they suggested be added to this. Then if you approve that, it goes right back to them and they have already had input into it so it shouldn't be an issue.

MARK SEIB: Next items are tabled complaints.

ATTORNEY TRENT VAN HAAFTEN: Can we start with the complaints that have someone here to address the complaint? Mr. Bebout is here.

MARK SEIB: Mr. Van Haaften has suggested that we take up the ones which someone is here so we don't take up any more of your time. Does anyone on the board have any problem with us doing that? Then we will move onto 727 E 2nd St., Mt. Vernon, IN. Mindy can you give us some history.

MINDY BOURNE: The initial complaint was filed on October 26, 2022 as an owner operating a business in an area not zoned for a business. I sent the letter by regular mail and had no response. So I sent the letter again by sheriff and copy served on 12/22/2022, at the last meeting we tabled it until this month because I had not received notice from the sheriff yet. The property owner responded on 12/27/2022 that they would be attending the meeting tonight. Brian Bebout called the office and stated he received the letter and he has not been operating the business out of his home for about 4 months and he will attend the January 8, 2023 APC meeting.

MARK SEIB: Please come to the podium to speak. State your name and address for the record.

BRIAN BEBOUT: 727 E 2nd St., Mt. Vernon, IN. Honestly, this is my first business that I have ever started as an LLC. It was just ignorance. I tried doing it out of my yard because I had seen others do it around town with little signs in the yard. I really didn't think it was that big of a deal, I did not research in to it believe it or not. Sitting right there, I have learned quite a lot just listening to you guys. Best thing I can say is that I apologize.

MARK SEIB: What kind of business is it?

BRIAN BEBOUT: I own a fab shop. I build off road vehicles, bumpers and stuff like that. I do repairs on boats for people who hunt waterfowl and stuff like that. They go out hunting and fishing like that and bust a hole in the boat. They bring it to me and I can spot weld it back together, grind it flush and send them on their way. Business started out not to bad in October of 2021 and then it went south. I wasn't making any money. I even went out to Jamplast because I wasn't making any money. Eventually we just closed down, I just never took the signs down.

MARK SEIB: So are you telling me that you are no longer operating the business on the property?

BRIAN BEBOUT: Yes, I apologize

MARK SEIB: So you have no intent in opening that business back up unless you do it right?

BRIAN BEBOUT: Yes that is correct. Again, I apologize. I did not know you had to change zoning and stuff.

MARK SEIB: Does the board have any questions for this gentleman? Hearing and seeing none, you may have a seat. Is there anyone else wishing to speak about this complaint? Seeing and hearing no one. What is the pleasure of the board?

Andy Hoehn made a motion to call this complaint closed. Motion was seconded by Randy Owens. **Roll Call Vote (8-0). Yes. Motion carried.**

MARK SEIB: Next up is 607 E 4th St, Mt. Vernon. Trent can you give the board an update on this case.

ATTORNEY TRENT VAN HAAFTEN: These buildings used to house Gottman Electric and the paint place. Some people came in and started a pallet business and it was not zoned for such a business. We went back and forth for a while and an Ordinance Violation was filed and we went to court. An agreement was reached that basically you don't operate for a period of time, 6 months, which ends this month and the legal case would be dismissed. They indicated to me that they are looking elsewhere to try to find another location for their business. During the discussions they raised a question with me that they have a bunch of pallets inside the building. I informed them that they could haul them off, the idea here is that you are not engaging in a pallet business, but if you have stuff in there, then haul it off. That is what I have reported to you at each meeting. I will tell you that during the course of all of this that the two members of the LLC have visited me a couple of times at the office. From a personal standpoint, I can tell you there wasn't stuff outside. Today when I went by, there is a truck by there loaded up with pallets. When I get back to the office about an hour later, the two gentlemen stop in to see me because we are due in court on January 23rd. That is when if everything is going fine the case would be dismissed. They come in asking, that they just took a load out today and they still have more pallets in the building would they be allowed to take it out after the 23rd? I reminded them that they can't have it outside and they can't operate a business but if they got stuff in there to get it out. That is my report. I am due in court on the 23rd. I do not have any information given to me that they have been operating a business. And because they haven't been conducting a business there, then the course of action would be to dismiss it. I have never seen anything stacked outside the way they did in the beginning. So that is my report.

ANDY HOEHN: I did drive by there today and did take a picture. There were pallets exiting the property, I did not see pallets going in. The door was propped open and you could see there still were pallets in the building, I am not sure how many.

ATTORNEY TRENT VAN HAAFTEN: They did say to me they are all in the old paint store and they only get moved into the old Gottman block building is when we are loading them.

ANDY HOEHN: I would say they are doing what they said they were supposed to do. I saw nothing wrong to challenge them about.

RANDY OWENS: And they have been reporting to you with what they are doing. I make a motion to dismiss.

ATTORNEY TRENT VAN HAAFTEN: That is already on the table for the court.

MARK SEIB: Yes, the board took a vote for that already. My question is, if I heard you correctly, they are asking for more time past the 23rd if they don't have all the pallets out?

ATTORNEY TRENT VAN HAAFTEN: They basically said it would take them longer to haul them out of there.

JOE MARVEL: How long have we been doing this? Since 11/3/2021?

ATTORNEY TRENT VAN HAAFTEN: From a practical standpoint is I go to court on the 23rd and explain to the court what has been going on and it is dismissed. A new complaint can be filed if they continue to be in violation of the ordinance. Then we go with a new case. No motion is necessary. They can store the pallets inside of the building, they just cannot operate a business.

ANDY HOEHN: Can we make a contingency on the case about getting the pallets out say within 30 days so we can see a deadline to get this over with.

ATTORNEY TRENT VAN HAAFTEN: When we get into court I can impress on them that the board would really like those out of there. And if the board feels they see anything they are not afraid to start over at ground zero.

ANDY HOEHN: I would say let it play out with the courts.

MARK SEIB: With that being said, does anyone else have anything to add or comments to make? Hearing and seeing none then we will just let Trent give a final report after the court date.

MARK SEIB: Next item is 822 W. 3rd St., Mt. Vernon, IN

ATTORNEY TRENT VAN HAAFTEN: This is one which started as a complaint as a truck or two parked in the yard. I have talked to the gentleman, Mr. King. He has not showed up to a meeting before with the board, so we went ahead and filed with the court. So he is due in court on the 23rd also. In looking at the recent pictures we may be down to one car parked back by a tree. This was one where I indicated that his brother had passed and I am handling the estate of the brother. That has been one way I have been able to communicate with him. I know one or two of the vehicles there originally belonged to his brother and has since been sold. I will see what I can find out about the car.

MARK SEIB: Is anyone wanting to speak or take any other action. Hearing and seeing none we will let this one play out in court as well.

Next on the agenda is Luigs Road.

ATTORNEY TRENT VAN HAAFTEN: This is the one with the camper next to the house. We did actually have a trial on this and we were successful. We got a monetary judgement. The gentleman was in the Posey County jail. At our last meeting it was decided to wait until after the first of the year when he gets out and then I will send him some contact information about hey we have this judgement, please take the necessary steps and start paying that judgement off.

MINDY BOURNE: Our photos from January 4 show that one camper/rv has been moved.

ATTORNEY TRENT VAN HAAFTEN: It went to court, it was successful, and we got a judgement for fines and attorney fees. Now it is a matter of trying to collect them. As we talked at the last meeting, for me it is how much pursuing of these complaints you want to get in to. We can file injunctions, we can file declaratory relief that a judge orders them to remove it. Ordinarily under the Ordinance we have a monetary fine. That is what we got in this one. What the hope is and what has happened in every case I have worked with, the offender has done something or has remedied the problem.

MINDY BOURNE: But he didn't get out of jail until the end of December.

MARK SEIB: I think with no further discussion, we will let this one roll out until we see what happens.

10422 Blake Road, Wadesville, IN

MINDY BOURNE: This one was about a construction company dumping construction waste on the property. There was change in ownership. Basically, no one has ever contacted... well, I think we did have one person contact our office. They never came to a meeting. In December we tabled it until January. Trent, did you send them a letter?

ATTORNEY TRENT VAN HAAFTEN: Yes.

MINDY BOURNE: You sent them a letter back in November. No one ever came to the meeting. Then Trent sent them a letter back in November and no one ever responded to that. My most recent report is, and there are photos, and it looks like it is pretty cleaned up.

MARK SEIB: Yes, pretty much cleaned up from what was there.

MINDY BOURNE: January 11 there was another transfer of ownership. Now we transfer from Trevor Alvey to Damian and Jada Smith. The complaint originally started with Michael Poe.

ATTORNEY TRENT VAN HAAFTEN: I know at the December meeting there was a question about wanting to check on the cleanup. It looks to be cleaned up.

MARK SEIB: The neighbors were very upset. Has anyone heard anything from them?

MINDY BOURNE: I haven't heard from the neighbors since they were at the one meeting. For the new members, the problem with these complaints is I send out letters and they ignore my letter or they say they don't get it. The letters come back to me with no response and we get to the meeting and nobody is here. I send them by sheriff and that works sometimes and sometimes it doesn't. It usually trickles down to Trent having to send a letter. It's usually a battle just trying to get contact with the owner. That is what this situation is here and the property keeps transferring to new ownership.

RANDY OWENS: It doesn't look like it is being subleased to another company any longer. There's still some stuff there. Do they have to clean that up before we are satisfied?

ATTORNEY TRENT VAN HAAFTEN: One of the main complaints was they were burning stuff out there. The pursuit was there was originally a work trailer there so the question was are they operating a business there or as storage or a waste place for a construction business. The violation of the Ordinance was do they not have the proper use for that particular location. I am not aware of any other indications that anyone else is using this as business operation other than a bunch of guttering and stuff laying on the ground. So the question would exist whether the current owner is in violation because of their use. I am not sure there has been any indication of any use other than there's the dirt and there are some things they have on the dirt.

KEITH SPURGEON: Can we declare this one has been taken care of since there has been no more reports of fires and it seems to be cleaned up a little bit with no examples of any fires. That and the fact that it has changed owners? The current owner really isn't in violation. Can we mark this one as completed and then if we get another complaint with the new owner we start again.

RANDY OWENS: If you think back to the very first discussion it was that it was zoned Agricultural and there appears to be a construction company there and that is taken care of.

DAVID DAUSMAN: So I understand this form, who filed the complaint?

MINDY BOURNE: John Stofleth. It was actually two.

DAVID DAUSMAN: So you send a letter to these people stating that we vote this as done?

MINDY BOURNE: I don't send them a letter that this is done. Realistically a complaint doesn't get drug out this long. Usually once a complaint is filed, I send a letter to the person that the complaint was filed on and to the people that filed the complaint letting them know this is coming before a public hearing with the date and time. Everyone shows up here and we discuss it. Either the people agree to get into compliance or whatever and both parties are here and it is done.

ATTORNEY TRENT VAN HAAFTEN: And David, I think both John and Jerry have attended meetings.

MINDY BOURNE: They have attended meetings.

MARK SEIB: Yes, they have except for tonight. They have been here all along.

MINDY BOURNE: The problem with this one was trying to get notice to the original person Michael Poe.

ATTORNEY TRENT VAN HAAFTEN: It is obvious that word got to somebody since there was a cleanup.

MINDY BOURNE: The cleanup was occurring without them ever talking to us. You don't have the old photos. We've gotten to the point now that the photos are stacking up and it gets confusing, so we've just been putting the most recent photos in your file. I have them all here if you want to see them.

KEITH SPURGEON: If the ownership had not changed and they were still not getting in touch with us, then that might be a little different.

Joe Marvel made a motion to call this complaint closed. Motion was seconded by Keith Spurgeon. **Roll Call Vote (8-0). Yes. Motion carried.**

MARK SEIB: 600 Mill Street, Mt. Vernon

MINDY BOURNE: This one was about... it says spreads rock and making a drive on Mill Street and on the lot beside the building which also runs along the street. Placing gravel on residentially zoned property. A letter was sent to the property owner and got no response. That was back in November. On November 10 the board made a motion to table until January. Current photos from January 4 shows the gravel is still in place and I still have had no contact with the property owner.

ANDY HOEHN: I would like to see these with gravel discussion at least put on hold. There will be some discussion within the City Council as to what the going forward position might be. Although the Ordinance is written as it is written. It might be subject to change. I don't want to throw money into legal coffers and to go after something that may change or is at least in discussion.

MARK SEIB: Andy, you are telling us that the city may be making changes?

ANDY HOEHN: Yes, on the surface. It probably won't be hashed out this year.

RANDY OWENS: Is there any way to table this until Andy reports back on what the city has done?

MARK SEIB: It is whatever the board wishes.

Randy Owens made a motion to table this complaint until we hear from Andy Hoehn on the City's position on the rock. Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion carried.**

MARK SEIB: 418 W. 8th Street, Mt. Vernon

ATTORNEY TRENT VAN HAAFTEN: I can report to you that this is the one that we didn't get any response from so we filed an Ordinance Violation. He is due in court on January 23. This was a small rv in the back yard.

MARK SEIB: So we have it going to court. Is there anything the board feels we need to take action on? Hearing none, I think we will just let this one play out until we hear something from there. We will let this one ride.

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

MINDY BOURNE: The January 4 photos shows that it is cleaned up in my opinion.

ATTORNEY TRENT VAN HAAFTEN: It also appears that the house is empty.

Andy Hoehn made a motion to call this complaint closed. Motion was seconded by Keith Spurgeon. **Roll Call Vote (7-0) Joe Marvel abstained. Yes. Motion carried.**

MARK SEIB: 727 E. 2nd Street, Mt. Vernon

MINDY BOURNE: This is the moving camper.

MARK SEIB: For the ones that don't know, we've had the same trailer show up at another location. Now it got moved again?

MINDY BOURNE: You have a little note at the bottom of your agenda that this violation was moved from 714 W. 6th Street to 731 Mill Street. These two new complaints are tied together. At 714 W. 6th it was moved from rear alley to the front. We got service by sheriff. Then the camper was gone. We tabled it because we got word... we got this other complaint and I hadn't sent notice to them yet. Mr. Cross came into the office to address the complaint at 731 Mill Street and he is buying the property on contract from Larry Horton. He said he had never received notice on property at 714 W. 6th Street regarding the camper and he stated someone was living in the camper at 714 W. 6th but they have moved out and are in Texas now. He stated the camper will be moved off the property at 731 Mill Street today. I told him per the Ordinance it cannot be used as sleeping quarters and I advised him to attend the meeting on January 12 at 6:00 p.m. He said that he would attend. His response was where am I going to put it? I told him it can't be on this property. So these two are tied together. On January 4 a picture was taken and it looks like he just moved it into the back yard again. Before it was partially in the alley.

MARK SEIB: Does the same gentleman own both properties?

MINDY BOURNE: Now he does. When the complaints were filed it was stated both were owned by Gayle Cross. Our GIS showed Larry Horton owned the one at 731 Mill Street, but he is buying it on contract. The pictures that were submitted with the complaint on 731, that camper is now in the back yard at 714. The camper is not at 731 any longer.

MARK SEIB: But the gentleman who currently owns both of the properties is just playing a shell game.

ATTORNEY TRENT VAN HAAFTEN: So the issue according to the Zoning Ordinance, is someone living in the camper?

MARK SEIB: Is it on a driveway?

MINDY BOURNE: That is not what the complaint was.

RANDY OWENS: The original complaint was that it was parked in the alley with someone living in it.

MARK SEIB: The way it looks to me it is out of 714 and it is at 731 and there is no one living in it. So I guess until we get a complaint that it is parked in the grass or something like that, we will consider them closed.

Joe Marvel made a motion to consider both complaints closed. Motion was seconded by David Dausman. **Roll Call Vote (7-1). Yes. Motion carried.**

DIRECTOR'S REPORT: None

APPROVAL OF PAYROLL AND BILLS: A motion was made in the affirmative by Mike Baehl and seconded by Joe Marvel to approve payroll and bills for last month. **Motion carried.**

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

CITIZEN CONCERNS: None

ANDY HOEHN: I would like to see us someday, not tonight, have a discussion on complaints. I feel like we are spinning our wheels on the complaints. I wish there was something like a ticket that we could write right off the bat.

MARK SEIB: Trent and I have had this discussion already.

RANDY OWENS: Failure to appear.

MARK SEIB: We have some thoughts. What it ends up being is that we do have the authority to fine. But we need to do that in the very beginning when it is issued.

ATTORNEY TRENT VAN HAAFTEN: There is still due process. If you get a complaint, Mindy can't just have them come before you and you say we are going to fine you \$100. It is our job to enforce the Zoning Ordinance. But we have to file an Ordinance Violation and you go through the court to do that.

MARK SEIB: I thought we had to file a fine to go to court in order to retrieve attorney fees and everything else.

ATTORNEY TRENT VAN HAAFTEN: I guess the way to put it, you cannot be judge, jury and executioner. The City has its Building Commissioner or the process for their buildings. So there is a set process put in that allows you to do that. We enforce an ordinance. That ordinance is part of a due process which still requires some sort of hearing. In our case it means filing an Ordinance Violation in Superior Court. All of us have the right to say I didn't violate that ordinance. So that is a due process. You have to go through that before any fine can be imposed. It's the same with the City and code violations. You can't just say here is a \$100 fine. You have to have a hearing before a hearing officer and give that person an opportunity to defend themselves or explain themselves. Then it would allow a fine to be imposed.

JOE MARVEL: Is there any way we can say here is your complaint and Mindy sends the letter and we tell them when the meeting is. If you are not at the stated meeting it will be \$50 a day...

ATTORNEY TRENT VAN HAAFTEN: No, because again what you are saying there is that you are adjudicating they are "guilty" and you can't do that without due process. One thing you could do, right now, this is my view, you've always taken an informal process. Somebody comes in and makes a complaint. We had the run of it, car parked in the yard. So you've tried to

bring those people in here to get it worked out. One thing you could do if you have a complaint and you feel the complaint is sufficient, you can file the Ordinance Violation right away and go to court. That formalizes it more. But we have always in my view we take a more informal process trying to get this fixed. The things we have had have not been major ordinance violations. Think about cars parked in the yard. It's more nuisance type stuff. Again, that is my view. But you can't just say you owe us \$50. You have got to go through a process before that is entered.

DAVID DAUSMAN: How many of these would be solved by either a Mt. Vernon police officer or a deputy showing up and telling them that they are in violation?

ATTORNEY TRENT VAN HAAFTEN: Dave, my view is that it would be great if we had somebody that if a complaint came in, then somebody could go to this house and say we had a complaint about these cars parked in the yard are a violation of the ordinance and can you get that cleaned up.

DAVID DAUSMAN: Wouldn't that be if it was in the city? Wouldn't the police take care of that?

ATTORNEY TRENT VAN HAAFTEN: No. Again, my opinion, is the city should become more involved enforcing some of these things as opposed to putting cleaning up the city on the APC. That's my opinion.

RANDY OWENS: Would it shorten the cycle time if... If somebody makes a complaint and it comes to us and we look at it and we agree it is a complaint. If Mindy has notified them and they don't show up at the meeting and we have evidence after that they have taken no action to address the complaint that we automatically go to court.

ATTORNEY TRENT VAN HAAFTEN: Yes, you could do that. In my view if we had something or someone contact them and say this is a problem as opposed to giving someone a letter. I don't want to send Mindy out knocking on these doors.

MARK SEIB: Maybe we can go to Cynthiana, Poseyville and Mt. Vernon and ask them if they can find somebody that would be able to address those complaints with the people and possibly Ed or someone in the community that go out and do inspections that might be able to address it. But I'm not saying it should be Ed's responsibility. I'm saying maybe the Commissioners might be able to find somebody that would fit that category. I guess what you are saying Trent, is that first initial contact should say clean it up or we will have to...

ATTORNEY TRENT VAN HAAFTEN: I just think contact from a human as opposed to a letter is going to be key. But now getting into what you are saying David, we can ask the sheriff's department or city police department if they can serve these letters or notice upon people. They may very well do that. It would be great if they did. It may run into a situation where those agencies say that is not our responsibility.

ANDY HOEHN: We need to go back to the Articles of Incorporation for this body the purpose is to enforce. That is a verb. It's an action. The fact is that we have chosen a method to enforce that is pretty ineffective. In my opinion this body should have that person. If we are the

enforcement body you've got these towns that delegated this out. Mt. Vernon doesn't have their own APC or BZA. Although it could have. At one time I think it probably did.

MINDY BOURNE: But we enforce your ordinance.

ANDY HOEHN: Not all of them you don't.

MINDY BOURNE: No, the zoning aspect.

ANDY HOEHN: Yes. That was part of the putting together of the zoning in the first place. Part of that was when we became part of it with the understanding that this body would enforce. That was the big drive to do this was to consolidate and to have uniformity across the county rather than like New Harmony.

MARK SEIB: That would also mean that you would have to ask the County Council, the County Commissioners to appropriate money for us to have a vehicle, another employee or some combination of the above to be able to enforce that.

MINDY BOURNE: They would probably enforce more than just zoning, wouldn't you suspect? That's not going to keep them busy. We get a lot, but that's not going to keep them busy. They would enforce other codes in Posey County as well.

ATTORNEY TRENT VAN HAAFTEN: If you could find someone that their job is to help enforcing the Zoning Ordinance, help enforce city code or whatever. I just think that human contact about the complaint... I think if my neighbor is making too much noise, I'm not writing him a letter, I'm calling the police and hopefully the police will come by and inform them of the complaint. These are frustrating.

MINDY BOURNE: The complaints have escalated.

ANDY HOEHN: I think that is kind of a sign of the times. I mean you've got people living in campers.

JOE MARVEL: Can we put in the letter if you are not here and it is not resolved then Trent...

ATTORNEY TRENT VAN HAAFTEN: We've always tried an informal process.

MARK SEIB: If we get them in to the office, Mindy gets this straightened out.

ATTORNEY TRENT VAN HAAFTEN: So you are saying Joe, that we put in the letter if you don't show up at the scheduled meeting, here are the next steps that will be taken.

JOE MARVEL: It put a little more of a... Maybe we should respond to this letter or show up.

MINDY BOURNE: Some of the letters I have here, they were returned by the Post Office. They weren't even opened. They didn't even get them.

KEITH SPURGEON: You will have that even if you have someone go to the house.

ATTORNEY TRENT VAN HAAFTEN: This frustrates me. We need to figure something out.

MARK SEIB: I think you can make the letter going out a lot stronger. If you do not come and try to work with Mindy or if you do not show up at the meeting at the designated date we show in the letter, then we raise that level to possibly court. I think we can redo our letter.

MARK SEIB: We have a special meeting on January 17 at 4:00 p.m. where we are going to open up the RFQs. We will have legal then review. At our next regular meeting we will pick one. We will present to the County Council on February 22.

I asked permission to come up with a steering committee. I have gone through and this is the group of people that I have asked. (Mr. Seib passed out the list of potential members). Everybody has multiple roles. Bryan Schorr, Commissioners. Keith is serving on behalf of the schools and BZA. Heather Allyn was on the Area Plan for a while and she represents the Council. Mike Baehl is with the Town of Poseyville and he is on the Area Plan. George Postleweight was a past APC member for many years and he also represents the realtors. He is retired now. Steve Sims from Town of Cynthiana. Byron Sanders is another gentleman that we feel is very highly qualified to help us with this. Hans Schmitz is working for Purdue and is a past member of the APC. That is 11 people. Mindy, Becky and Trent would be involved as well as whoever is picked to be the contractor. I will allow the committee to decide how often they want to meet, times, location. I guess what I'm asking for this to be approved so this committee can start forming and to be able to start once the money has been approved.

Joe Marvel made a motion in the affirmative to approve the formation of the steering committee. Motion was seconded by Randy Owens. **Roll Call Vote (8-0) Yes. Motion carried.**

Mike Baehl made a motion to adjourn the meeting at 8:03 p.m. **Motion carried.**



Mr. Mark Seib – President



Mrs. Mindy Bourne, Executive Director

Posey County Area Plan Committee List 2023

Transportation and Development

Dave Dausman
Greg Newman
Aaron Neufelder

Administration and Personnel

Mark Seib
Greg Newman
Andy Hoehn
Keith Spurgeon

Budget

Mark Seib
Dave Dausman
Greg Newman
Joe Marvel

Zoning

Joe Marvel
Randy Owens
Dave Dausman

Executive Committee

Mark Seib
Keith Spurgeon
Mike Baehl
Randy Owens

***Subdivision Committee**

Mike Baehl
Andy Hoehn
Randy Owens
Aaron Neufelder

*The Subdivision Committee will also work with the County Surveyor City Engineer, County Engineer, Soil Conservationist and County Agricultural Agent.

Site Plan Committee

Andy Hoehn
Mike Baehl
Joe Marvel
Keith Spurgeon

Recommended to the Board for Board of Zoning Appeals

Keith Spurgeon
Mark Seib

**Site Plan Committee Review Meeting
Posey Storage, LLC
Wednesday, December 21, 2022
10:00 am
Area Plan Office Conference Room**

Attendance

In Person

Ed Batteiger-Building Commissioner
Mindy Bourne-Executive Director APC
Joe-Marvel-APC

Zoom

Justin Collins-Property Owner
Barry Tanner-Tanner Engineering
Andy Hoehn-APC
Megan Ritterskamp-Posey County Soil & Water

Posey Storage LLC is proposing to construct two new storage buildings at their existing facility. 50x24-basic storage and 50x35-basic storage and rv storage.

Construction Stormwater General Permit is not required for this project.

Have not received the State Construction Design Release for this project.

Received no comments from agencies with jurisdiction at this location.

The committee went over the various requirements for site plans, see Findings of Fact sheet. All of these requirements have been met.

The committee has made a recommendation to approve the site plan.

FINDINGS OF FACT
POSEY STORAGE, LLC

I, Andy Hahn, make a motion in the findings of fact be made as follows

1. Development is compatible with surrounding land use. Zoning of this property is M-2 and is compatible with surrounding land use. Existing facility.
2. Water, sewer, and other utilities are available. Drainage will not change, it will drain to northeast. They are putting in new culvert across railroad tracks to help with drainage.
3. The design and location of the entrance, streets are favorable to health, safety, convenience and are harmonious to the development and adjacent developments. Nothing is changing on the site with existing traffic flow. Very minimal impact.
4. The plan meets the setback requirements for the M-2 District, except for the rear yard requesting Variance from rear yard setback from 20' to 15'.
5. The plan meets the building coverage requirements for the M-2 District.
6. The plan meets building separation.
7. The plan meets vehicle and pedestrian circulation. No changes to vehicle circulation.
8. The plan meets parking requirements. Not applicable.
9. Landscaping. Not applicable.
10. Building Specs. 50'x24' - 8'6" eave height, 11'x6' ridge height. 50'x35' 13' eave height, 18' ridge height, 12' doors. Pole barn, match existing structures.
11. Signage. No signage.
12. Recreation space.-Not applicable.
13. The plan meets outdoor lighting requirement. New directional pole light on northeast side
14. The development is in conformance with the Zoning Ordinance for the City of Mount Vernon, the Town of Cynthiana, the Town of Poseyville and Unincorporated Posey County Zoning Ordinance and with the Posey County Comprehensive Plan.

Motion seconded by: Joe Marvel

Adopted by Posey County Area Plan Commission

Mark Seib
President, Posey County Area Plan Commission

1-23-23
Date