

## MINUTES

### POSEY COUNTY AREA PLAN COMMISSION REGULAR MEETING

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

MAY 11, 2023  
6:00 P.M.

**MEMBERS PRESENT:** Mr. Mark Seib – President, Dr. Keith Spurgeon – Vice-President, Mr. David Dausman, Mr. Joe Marvel, Mrs. Stefani Miller, Mr. Greg Newman, Mr. Randy Owens, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne – Executive Director, Mrs. Becky Wolfe – Administrative Assistant.

**MEMBERS ABSENT:** Mr. Mike Baehl and Mr. Andy Hoehn

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

**SITE DEVELOPMENT PLAN:**

APPLICANT: Mike Greenwell  
OWNER: Billwell Properties LLC  
PREMISES: The Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 23, Township 6 South, Range 12 West, lying in Marrs Township, Posey County, Indiana. Containing 1.25 acres more or less. More commonly known as 3725 St. Philip Road, Mt. Vernon, Indiana. (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 a B-3 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 confirmed that no one on the board had a conflict of interest.

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

**MIKE GREENWELL:** 11410 Lower Mt. Vernon Road, Evansville, Indiana. We are here to apply for an application to add a patio for outdoor seating for Zaps Tavern. We will also be doing lighting, improving parking, new steps. Anybody that has been there before will know our steps are treacherous, so I want to update that, and add some handicap accessibility as well.

**MARK SEIB:** So, is it a patio that is going to be on the existing, or attached to the existing building?

**MIKE GREENWELL:** Correct.

**MARK SEIB:** And in your packet it shows the dimensions, 10' wide across the front and 35' across the biggest part over in the corner?

**MIKE GREENWELL:** Yes.

**MARK SEIB:** And this is going to be a concrete patio?

**MIKE GREENWELL:** Yes.

**MARK SEIB:** I am assuming there will be railing around it?

**MIKE GREENWELL:** Yes sir.

**MARK SEIB:** And then you said something about lighting.

**MIKE GREENWELL:** We will be doing parking lot lighting to light up the outer bounds of the property. We are using a pole system with lighting that is turned down, so we don't light up our neighbors. We are trying to be conscious of that also.

**KEITH SPURGEON:** I assume that the ramp is concrete also.

**MIKE GREENWELL:** Yes. There will be a poured pad so it's a good solid surface so they can get to and from easily.

**MARK SEIB:** Mike, how far is that from the road?

**MIKE GREENWELL:** Right now we can more than double park from the road to the front of the building.

**MARK SEIB:** So, it's 40'. Mindy found it.

**MIKE GREENWELL:** We have quite a bit of space.

**RANDY OWENS:** Will there be speakers and outdoor music?

**MIKE GREENWELL:** No.

**MARK SEIB:** Mike you may have a seat. At this time, we will open this application up for public comment. Is there anyone here wishing to speak for or against this application?

**JUSTIN CROWLEY:** 10930 Weinzapfel Road, right across from Zaps. My biggest question is with the outdoor seating area. I'm constantly getting Busch Light boxes, napkins, trash blown in my yard. Do you have a way to prevent that from happening all the time?

**MARK SEIB:** You will have to ask the board and then we will ask him after we are all done.

**JUSTIN CROWLEY:** I'm just trying to find a way to prevent that and then if this is going to eliminate some of the parking that he already has a hard time providing. I'm constantly getting cars parking in front of my house. I sometimes have issues getting my camper in and out of my driveway because when his parking lot gets full, they overflow to my side of the street. When he had JB's Barnyard over there, it was a madhouse in the front of my yard. Then the next day there was probably about 125 napkins all over my house. That's all I have.

**MARK SEIB:** Is there anyone else wishing to speak for or against this application? Hearing none, we will now close the public portion.

Mr. Seib confirmed with Mindy Bourne that there had not been any phone calls, letters or emails concerning this application.

**MARK SEIB:** We will now open this up to the board to discuss. I would like for Mike to come back up again and please address that question that you just heard concerning the parking and the trash.

**MIKE GREENWELL:** Number one, I would like to apologize for that. We usually do not bring any kind of food truck items to our property. We were doing a kickoff for the ice cream, obviously. Would you allow us to put signage up for no parking as a preventative measure to keep them from parking in front of their house? We did just tear down a building which was pretty large on our property to create more parking for our situation we are doing here.

**MARK SEIB:** Is that going into parking since you tore down the building?

**MIKE GREENWELL:** Correct. Now we can do more organized parking. We can accommodate more cars and try to keep everything on our property.

**MARK SEIB:** So, you're thinking about putting up some no parking signs?

**MIKE GREENWELL:** I am offering to so it may keep them out of his yard.

**MARK SEIB:** I'm assuming that is on a county road, isn't it?

**MIKE GREENWELL:** Yes.

**MARK SEIB:** We will have to go through the Commissioner to get that approval. That does sound like an answer to that question.

**MIKE GREENWELL:** That is an easy fix, I would think.

**MARK SEIB:** Does anyone else have any questions concerning that for Mike? Hearing none, you may have a seat. Again, like I said, it is up to the board to discuss amongst themselves or take action as they see fit or have someone else come up to give more information. I definitely think that since he has a building torn down it should help with parking and then working towards no parking should be somewhat of some help.

**MINDY BOURNE:** The Site Plan Committee Report is in your folder. Most of the stuff Mike has already addressed as far as what the project consists of the handicap access, and it will be ADA compliant. The Construction Stormwater General permit is not required for this project and they have received the State Construction Design Release. They are good to go. They've received all of the approvals they need.

**MARK SEIB:** So, the permit from us is the only thing lacking?

**MINDY BOURNE:** Yes.

Joe Marvel made a motion in the affirmative to approve Site Development Plan. Motion was seconded by Stefani Miller. **Roll Call Vote (7-0). Yes. Motion passed.**

Keith Spurgeon made a motion in the affirmative to approve the Findings of Facts. Motion was seconded by Greg Newman. **Roll Call Vote (7-0). Yes. Motion passed.**

**MINDY BOURNE:** This Site Plan has been approved. You will need to come into the office to get your Improvement Location Permit.

**REPLAT:**

DOCKET NO: 23-04-S-APC  
APPLICANT: Greg Kissel – Kissel Land Surveying, LLC  
OWNER: Darrel E. & Kimberly S. Decker  
PREMISES: Lots #20 and #21 in Kramer's Subdivision Section B of Section 25, Township 6 South, Range 12 West, lying in Marrs Township, Posey County, Indiana. Containing .886 acres more or less. More commonly known as 11318 & 11400 Kramers Drive, 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.

Mark Seib confirmed that no one on the board had a conflict of interest.

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

**DARREL DECKER:** 823 Lohoff, Evansville, Indiana. We are wanting to build on this land. The reason we are wanting to join the lots... these have been vacant for over 50 years probably and lot 20... It's on a hill and lot 20 is flat and it starts to slop off into 21. It's on such a V, if you have ever been out there, you kind of come 30' off Middle Mt. Vernon Road and 30' off Kramers Drive. You are pushed back into the corner and it's virtually impossible to put a field bed back there. We just need these to put the field bed...

**MARK SEIB:** Are you wanting to build a new home on these lots, and you are combining them to make the lot large enough to make it suitable for the house?

**DARREL DECKER:** Yes sir.

**MARK SEIB:** Does anyone on the committee have any questions? Are there any easements that would interfere with any of the construction?

**DARREL DECKER:** No.

**MARK SEIB:** You may have a seat. We will now open the 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 Mindy Bourne that there had not been any phone calls, letters or emails concerning this application.

**MARK SEIB:** Now it is up to the board to discuss and take action as they see fit.

**KEITH SPURGEON:** In this case it especially makes sense to combine the lots with the layout of the road, the way it angles across there. It's a lot easier if you combine the two lots. It would be good use of that land.

Keith Spurgeon made a motion in the affirmative for preliminary approval and authorize Executive Director to give final approval after 30 days have elapsed for Replat 23-04-S-APC. Motion was seconded by Joe Marvel. **Roll Call Vote (7-0). Yes. Motion passed.**

**MINDY BOURNE:** What just happened was this Replat has to receive two approvals, a preliminary and a final, but 30 days has to elapse before final approval can be given. They can authorize me to give the final approval after 30 days, so you don't have to come back and do another public hearing. Basically, it has been approved but we are going to have to wait 30 days before this plat can actually be signed and recorded. We can't issue a permit until after the plat is signed and recorded. I will be in touch with your surveyor because this plat still needs your signatures on there as well. He will get your signatures and then get this plat to me and 30 days from today I will sign it and then someone will have to come to the office to pick it up and get it recorded.

**MARK SEIB:** Let the record show that Andy Hoehn is now in attendance at the meeting at 6:23 PM.

**REZONING:**

**DOCKET NO:** 23-03-RE-APC

**APPLICANT:** Nicole Meny

**OWNER:** Zachary & Nicole Meny

**PREMISES:** Part of the Northeast Quarter of the Southwest Quarter of Section 24, Township 4 South, Range 12 West, lying in Smith Township, Posey County, Indiana. More commonly known as 11331 Water Tank Road, Cynthiana, Indiana. Containing .275 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

**NATURE OF CASE:** Petition to rezone property from A (Agricultural) Zoning District to B-3 (Commercial High Intensity) Zoning District under the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mark Seib confirmed that no one on the board had 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 wishing to speak concerning the application?

**ZACH MENY:** 12835 Jordan Lane, Evansville, IN 47725. The board recently approved us for 1.5 acres of Commercial Retail, right next to it there is approximately .25 acres with an existing building on it and we just want to make that .25 acre Commercial as well.

**MARK SEIB:** I do remember when you came to have that zoned. If I remember correctly, it was a barn of sorts.

**ZACH MENY:** That's what we plan to build, and we are still waiting to hear from the state for approval for the building. But there is a quarter acre that is right attached to it that has an existing barn on it. We just want to use that area as well as Commercial.

**MARK SEIB:** I guess that I am a little confused. There is a house there and a shed/pole barn. Is that what you are talking about as the barn?

**ZACH MENY:** Yes, 60 X 40.

**MARK SEIB:** And that has not been zoned for that yet?

**ZACH MENY:** Last time we did not include that in our request for zoning.

**MARK SEIB:** If I recall you were going to build new.

**ZACH MENY:** Yes, and it is taking a little longer and we are wanting to utilize that building in the future and currently for Commercial use. We are maybe July-August hoping to start that other Commercial building on the lot.

**MARK SEIB:** Where are you holding or keeping your supplies for all your things right now?

**ZACH MENY:** Most of it is in our barn where we live in Evansville. We have some as storage there. We don't conduct business there. Until we hear of what we can do, we are just kind of waiting.

**MARK SEIB:** I guess my only other question I have is that you bought this property, correct?

**ZACH MENY:** From my grandparents.

**MARK SEIB:** When was this?

**ZACH MENY:** October of last year.

**MARK SEIB:** Is there any other questions for them from the committee?

**KEITH SPURGEON:** I couldn't find your application; I think it got shoved in the papers. Can you remind me what is the commercial business that you got there again.

**ZACH MENY:** We run a distribution business for pinball and arcade machines.

**MARK SEIB:** Let the record show that Stefani Miller stepped out of the room at 6:27 PM. I was looking for an old barn on the property and when we pulled up the record, the garage has never been permitted. So that creates a little bit of an issue. You will need to get that taken care of to make sure the garage is the right setback for it, or we will need to get a Variance for it or something such as that. But that needs to be straightened up. We can change the zoning on this with the stipulation that that be taken care of. But I wanted to bring that to your attention that that had not been permitted yet. If it had been, then we needed to get that straightened out but the first initial look through of the record it had not. I am asking this for later for the Site Development Plan but are you looking for many people to be coming and going from this location during your business that you are going to have there.

**ZACH MENY:** No, not at all. This building will be primarily just storage. Retail space that we are going to be doing later may be a couple times a week someone maybe to pick up a pinball machine. For the most part we are just distribution so a semi might come once a week to pick up products, units or a game or two and take it away. We are not looking to have a lot of public there or anything. We may have a showroom in case somebody, which is why it is Commercial Retail. There's not going to be a lot of people, no.

**MARK SEIB:** Are there any more questions? Let the record show that Stephanie Miller is now back with us at 6:30 PM. Any more questions for them at this time? If you would, you can have a seat. We will now open the floor to the public. Is there anyone here that wishes to speak

for or against the proposed application for the Rezoning, please come forward. Seeing and hearing none, we will close the public portion.

Mr. Seib confirmed with Mindy Bourne that there had not been any phone calls, letters or emails.

**MARK SEIB:** Now it is up to the board to discuss amongst themselves and take action as they see fit. I guess we just want to put in there that if there is a motion to approve that they need to get that garage permitted and make sure it meets the setbacks and other requirements.

Joe Marvel made a motion to approve with the caveat that the building meets all of the permit standards. Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion passed.**

**MARK SEIB:** Of course when they get to the point of building, they will have to go through a Site Development Plan with lighting and all the other things will still come into play. Right now we are just looking at Rezoning. I think back when we did this, we asked why weren't you doing the whole thing. But now we are doing the whole thing.

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

**MINDY BOURNE:** This is a recommendation to the County Commissioners. They will be hearing it this Tuesday, May 16, here in this room at 9:00 a.m. I will be there, but if one of you could be present as well in case the Commissioners have any questions for the owners.

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**DEVELOPMENT PLAN APPLICATION SECS TIER 3**

DOCKET NO: 2023-01-SECS-3-APC  
APPLICANT: Scott & Heather Hedrick  
OWNER: Scott & Heather Hedrick  
PREMISES: Part of the Southeast Quarter of the Northwest Quarter of Section 35, Township 6 South, Range 12 West, lying in Marrs Township, Posey County Indiana. More commonly known as 5315 Hausman Road, Mt. Vernon, Indiana. Containing 4.870 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: The applicant requests Development Plan Approval to develop a Solar Energy Conversion System (SECS) – Tier 3

Mark Seib confirmed that no one on the board had 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 wishing to speak for this application?

**BRAD MORTON:** 5401 Weaver Road, Evansville, Indiana. It is a small ground mount system, about 10 kilowatts, the width is about 50' long x 10' wide. It basically looks like a



privacy fence. From the front side it would be black. I do have some pictures here if you would like to see them.

**MARK SEIB:** If you submit anything, we have to keep it for the record.

**BRAD MORTON:** That's fine. Would you like to pass them around?

**MARK SEIB:** Just give it to the end guy there. How many pages do you have?

**BRAD MORTON:** I brought three pictures.

**MARK SEIB:** Let's put in the record there are three pictures being submitted. "Exhibit A, three pages".

**BRAD MORTON:** It's about 100' from his house. There's nothing really special, in my opinion, about it. We've done a lot of these in Posey County over the years. It will generate clean electricity for his house. He will also have a power wall battery bank that will provide emergency power when the grid fails.

**MARK SEIB:** What's the height?

**BRAD MORTON:** The back of it is about 7' high.

**MARK SEIB:** These will be fixed?

**BRAD MORTON:** Yes.

**MARK SEIB:** Does the committee have any questions for him at this time? Hearing none, you may have a seat. We will now open the public portion. Is there anyone here wishing to speak for or against this application, please come forward and state your name and address for the record?

**ROBERT WEBER:** My wife has the property next door to his on the south side. I don't understand why they have to get this process to put solar panels on a house.

**MARK SEIB:** He is not putting them on the house, he is putting them on the ground.

**ROBERT WEBER:** It is still a homeowner. I know of two driveways, one along St. Phillips Road and one on Overpass Road. Both were put in to make money. One was for a cell tower and the other was for a logging operation. Both of them didn't have permits and didn't get put in according to county rules. But yet you got to go through this to put up solar panels.

**MARK SEIB:** Yes, per the ordinance that was established.

**ROBERT WEBER:** They have ordinances on driveways too, but you don't seem to care about.

**MARK SEIB:** We don't have anyone out in the field that is going around to go out and find them so we have to wait for complaints to come in and then address the situation.

**ROBERT WEBER:** Your County Foreman can't tell someone in the county that a driveway wasn't put in and it doesn't meet county standards. Somebody has to complain about it?

**MARK SEIB:** Any person can bring that to the attention of the Superintendent of the County Highway Department.

**ROBERT WEBER:** I talked to the County Foreman, and they don't do anything. I talked to the county people; they don't care.

**MARK SEIB:** If that doesn't happen, then you can bring it here.

**ROBERT WEBER:** I can tell you right now that doesn't happen.

**MARK SEIB:** Well, we will have to talk about that at another time because that is a separate issue.

**ROBERT WEBER:** Solar panels, personally I think they should be included in the building code so that any new home should have solar panels on them. That is my opinion. I am all for it. I wish we could afford them. That is all I have to say.

**MARK SEIB:** So, are you for or against this?

**ROBERT WEBER:** I am all for solar.

**MARK SEIB:** Does anyone have any questions?

**KEITH SPURGEON:** Do we need his address. You said your wife had some property, but you didn't say your address.

**ROBERT WEBER:** 5411 Hausmann Rd., the wife owns it.

**MARK SEIB:** Thank you. Are there any other questions? You may have a seat. Is there anyone else wishing to speak for or against this application, please come forward. Seeing and hearing none we will close the public portion.

Mr. Seib confirmed with Mindy Bourne that there had not been any phone calls, letters or emails concerning this application.

**MARK SEIB:** It is now up to the board to take action as they see fit. It is obvious that he has enough acreage here to take care of that.

**KEITH SPURGEON:** I don't see any problems with it.

Andy Hoehn made a motion to approve Docket #2023-01-SECS-3-APC. Motion was seconded by Keith Spurgeon. **Roll Call Vote (8-0). Yes. Motion passed.**

**MINDY BOURNE:** Brad, they will have to get an Improvement Location Permit for the solar panels before they are installed.

**BRAD MORTON:** What all do they need?

**MINDY BOURNE:** They will need one from the Area Plan, that is the Improvement Location Permit, and then one with the Building Commissioner as well. But we are in the same office.

**MARK SEIB:** So, the next item is the complaints that were tabled. Trent, will you help us get through this? 600 Mill Street, Mt. Vernon

**ATTORNEY TRENT VAN HAAFTEN:** This is one that has been put off or continued that is the rock and gravel in the yard. There has been no action taken on that or direction to file anything as to a violation. 418 W. 8<sup>th</sup> Street is the camper that was parked in the yard. We have attempted to get service on Mr. Stewart and that has not been successful through certified mail. The last court hearing was April 24<sup>th</sup> didn't get service, so we are trying to get service by the sheriff's department is now scheduled back in court for June 26, 2023. I spoke to Mindy earlier and when we first got the complaint, it may have appeared that someone was staying in the camper I am not sure the most recent photographs shows the camper is still in the yard but it looks a lot different in terms of potential occupancy.

**MARK SEIB:** So, you still haven't been able to make contact?

**ATTORNEY TRENT VAN HAAFTEN:** To be direct, I think he has been in and out of jail and it is not certain if he is still there locally or not.

**MARK SEIB:** What is the pleasure of the board.

**ATTORNEY TRENT VAN HAAFTEN:** Like I said we still have a hearing now scheduled for June 26<sup>th</sup>.

**MARK SEIB:** What about 600 Mill Street? Let's talk about that one. 418 W. 8<sup>th</sup> Street is obviously to be continued until the court date. 600 Mill Street?

**KEITH SPURGEON:** I think the last time we tabled that while waiting to see what the City was doing with the all weather service driveways. That we had received an official letter from the city saying they were making that change so we tabled this to wait for that process to go through. I guess we are still waiting for that.

**MARK SEIB:** Andy do you know of any timeline concerning that?

**ANDY HOEHN:** The request was made of this body, so it is waiting for us.

**ATTORNEY TRENT VAN HAAFTEN:** I was going to address that a little later. I emailed you today the drafts of the requested amendments that the city of Mt. Vernon has provided. That process is, once a local legislative body requests an amendment to the zoning ordinance, we then have to prepare a draft for the amendment, we conduct a public hearing. Right now, that public hearing is set for your regular June meeting. So, if this board approves it, not really approve it. You make one of three recommendations. You can give it a favorable recommendation, an unfavorable recommendation, or no recommendation. It then goes back to the City for its addressing it in that regard and the process kind of continues until or if it is approved as an amendment to the zoning ordinance. This particular one is a part of that package of three, the other two is the anonymous reporting of complaints and the last one is the penalties and fines. Those are the three that I emailed to you this morning or this afternoon.

**JOE MARVEL:** Mark, in light of what we are discussing here, I make a motion that we just drop this and get rid of it. We are making changes to it I don't see any reason to keep harping on something we are going to be changing or that the City of Mt. Vernon has actively asked us to change.

Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion passed.**

**MARK SEIB:** New complaint, 1105 E 5<sup>th</sup> Street, Mt. Vernon, IN. Vehicles are parked in the yard.

**MINDY BOURNE:** A letter was sent to them dated April 17<sup>th</sup>; I gave them until May 1<sup>st</sup> to contact me. They did not contact me by May 1<sup>st</sup>, however on May 8<sup>th</sup> the person that we sent out to take pictures, the photos that he provided show that the property is in compliance and that the vehicles were not there. Then later that day, Paula Garrett called the office to say that she has been in contact with the tenants, and they will stop parking in the yard. Therefore, it is no longer in violation.

**MARK SEIB:** Is there anyone here wishing to speak concerning this complaint?

**JOE MARVEL:** I make a motion that this complaint has been resolved. Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion passed.**

**DIRECTOR'S REPORT:** None

**MARK SEIB:** At this time, I would like to have some discussion from the board. Trent has been preparing some stuff. I apologize Trent, I have not seen the email. Let's just have some discussion about that so we can understand this.

**ATTORNEY TRENT VAN HAAFTEN:** As mentioned we have an amendment to the zoning ordinance, which can come from a legislative body that is under the ordinance or it can come from you. What I mean by that, the County Commissioners, City Council we just dealt with one from the Town of Poseyville, Town of Cynthiana. The City of Mt. Vernon in the course of the past 30 to 45 days sent us three requests to amend the ordinance as it applies in the City of Mt. Vernon. The first one dealt with the requirement of all-weather material on unenclosed parking

off street parking. So, we have prepared that draft for that I worked with the City Attorney, Beth Higgins to make sure that it meets their format and things of that nature. The second request dealt with, when a complaint is made it has been the practice of the Area Plan that these complaints that if I went into the office to make a complaint about an ordinance violation, I had to leave my identifying information. My name and who I am as a complainant. The City has asked that as it applies to the complaints that are made within the city the identity of the complainant need not be required. That if I walked in and wanted to make a complaint I do not have to tell them who I am nor do I have to provide any identification. So that is the second change they are requesting. The third change they are requesting is, currently the zoning ordinance, if there is a violation of the ordinance it sets out what the penalties are. Right now, the penalties of a fine of not less than \$25 and not more than \$500. Under Indiana statute a unit of government can establish penalties in the form of a fine for an ordinance violation. What the City is asking for let's bring everything up to date, so it is consistent with Indiana statute. The current Indiana statute is that you are allowed to have a penalty of a fine not to exceed \$2500 for a first offense of an ordinance violation and not to exceed \$7500 for a subsequent offense. So, they have just asked can we change it to be consistent with Indiana Code. So that is the third requested amendment. What they have also mentioned in their request is that if it makes sense for consideration by you should the County consider changing the potential penalties in the form of a fine consistent with state statute. Cause if it goes forward as is and there is a violation in the City the fine that a judge can impose is one level but if that violation occurs in the County or the Town of Cynthiana or Poseyville you would still be at the \$25 to \$500 range. So, I think it is worth mentioning to all of you whether that was something you would want to consider also. I say that also because of the process right now the wheels have started in terms of an amendment for the City of Mt. Vernon. If the county wants to jump on to that and it would be possible for you to move forward with just amending the ordinance and that gets sent to the City the Town of Poseyville and Cynthiana, so it would be done all at once as opposed to going through this twice. Once for Mt. Vernon and once for the County. So I bring that up just for you to consider, and right now what we are looking at you have to conduct a public hearing, you have to put notice, conduct a public hearing. We are aiming for that on June 8<sup>th</sup> regular meeting.

**KEITH SPURGEON:** The language on the fines, are you thinking that will be like a range, we just increase the dollar amount of the range? Or would it be like a specific dollar amount? First fine is like \$12, the second fine is \$20.

**ATTORNEY TRENT VAN HAAFTEN:** It tracks Indiana Statute, and it is a situation of a fine not to exceed \$2500 for the first offense. You guys are not the ones imposing the fine. This would be if we go to court and due process takes place and someone is found to have violated the ordinance then it is up to the judge ultimately to impose the fine. It is a situation it might not be a big deal hear is a \$10 fine. Or if it is a bigger deal and it means more than the judge to could say, here is a \$2000 fine. It is just basically a range not to exceed.

**KEITH SPURGEON:** So, we don't assess the fine.

**GREG NEWMAN:** So, it is entirely up to the judge's discretion, there are no guidelines as far as a minor versus a major offense.

**ATTORNEY TRENT VAN HAAFTEN:** No.

**MARK SEIB:** I think this is also being brought forward because there has been a lot of discussion about attorney fees that we go through when we take someone to court, and we win. In trying to do that the fine or the penalty would offset in some cases. In most cases the judge may not grant the attorneys cost or fees, but they would impose a fine. And we can recoup some of that money that way basically.

**ATTORNEY TRENT VAN HAAFTEN:** A fine is different that making someone pay for an attorney fees and costs.

**MARK SEIB:** Where does the fine money go then?

**ATTORNEY TRENT VAN HAAFTEN:** It goes into the general fund.

**KEITH SPURGEON:** I think it is a good idea that if we are going to do one, we should do both. So, the City and County are the same with the fine limit and doing the same thing with moving forward with not requiring a signature on a complaint. Would you do the same thing for that too? Our request is from the City for the complaint so if we approve that so people filing a complaint within the City wouldn't have to sign their name but if you were in the County you would. I would think you would want them the same.

**ATTORNEY TRENT VAN HAAFTEN:** Let me interject. I know there has been some communication. We can't act until we get a specific request from, like the City Clerk that sent letters. That is what triggered us moving forward. They just haven't gotten that letter yet.

**RANDY OWENS:** So, all we can do is give a recommendation to the change.

**ATTORNEY TRENT VAN HAAFTEN:** You can initiate the change. Let's stick with the issue of the fines right now. You can make a motion that you wish to amend the ordinance for the fines and penalties. I would then take what I already have drafted for the City of Mt. Vernon and would convert that into the County Zoning Ordinance, so that would be able to be advertised for a public hearing come June 8<sup>th</sup>. You pass that or you make a favorable recommendation for that. That then goes Mt. Vernon, Poseyville and Cynthiana legislative bodies for their consideration and if they say yeah, we want to do this as it applies to us, pass it, it is done for the entire county. I think that is relatively easy. You could make the same motion tonight in regard to the anonymity of reporting. And we would kind of do the same thing in terms of having that public hearing not just on the city request but on your request. And anything you gave a favorable recommendation to also goes to the Commissioners as the legislative body for the County.

**RANDY OWENS:** So, would we keep the same process that we have now, kind of that we are notified of a potential violation. And we give someone 30 days to take care of it and if they didn't take care of it, then we could say they're in violation.

**ATTORNEY TRENT VAN HAAFTEN:** It doesn't change. The County Ordinance right now says if you get a complaint then you must, Area Plan must investigate and go forward with it. The anonymity of the reporter doesn't change that.

**RANDY OWENS:** No, I am talking about the fines. If we got a complaint, could we say it is in violation? Can we fine it right then?

**ATTORNEY TRENT VAN HAAFTEN:** We talked about that before, that you do not have that authority. What you are doing is pursuing an Ordinance Violation. I mean I always hate to equate it with a crime. But that is sort of, we have to go to court. You can accuse somebody of something, but due process requires us to prove it.

**RANDY OWENS:** So, the due process would stay the same?

**ATTORNEY TRENT VAN HAAFTAN:** Correct, yes.

**JOE MARVEL:** Trent, do you need us to do anything for these, the City change to the all-weather?

**ATTORNEY TRENT VAN HAAFTEN:** No, I just wanted to get that to you ahead of time for you to take a look at and think about.

**JOE MARVEL:** And that will be in June?

**ATTORNEY TRENT VAN HAAFTEN:** Yes, that will be a public hearing on June 8<sup>th</sup>. I guess what I am saying on the penalties and fines and the other if you want to do it, if you thought hey the County should do it, then take action, make a motion, vote on it. If you say you want it to change it as it relates to the County Zoning Ordinance, then we could do that at that June 8<sup>th</sup> hearing also.

**JOE MARVEL:** I just wasn't sure if you were looking for a motion Mt. Vernon part of that as well as the other two parts of that?

**ATTORNEY TRENT VAN HAAFTEN:** No, there is no motion.

**MARK SEIB:** Mt. Vernon has already initiated that.

**ATTORNEY TRENT VAN HAAFTAN:** This is purely a discussion, and you all do what you want to do.

**MARK SEIB:** I guess we need to take each one individually to make sure that we are clear in going through that. We can have discussion or is there an action on the penalties, readjusting the penalties. So let's just talk about the penalties.

**KEITH SPURGEON:** I am sorry, I am just a little bit confused about all of this. So, if we approve this, is there still a public hearing on this?

**ATTORNEY TRENT VAN HAAFTEN:** Absolutely, all you are saying now is that we want to amend the ordinance. So, let's start the process, the amendment process. Right now, it is just for the penalties and fines. So, if you pass this motion then what I will do is prepare an amendment to the County Zoning Ordinance on the penalties and fines section. We will advertise that for a public hearing, so the public is aware of it. We will have that public hearing on June 8<sup>th</sup> and it is at that time that you will make a determination if you want to give it a favorable, unfavorable or no recommendation. If it is favorable, then we will send it out to the legislative bodies.

**JOE MARVEL:** Do they all have to approve it before the County enacts it?

**MARK SEIB:** If one doesn't, they are the only one that is not included. But if the Commissioners do then the County is included. Each one has over their own jurisdiction.

**KEITH SPURGEON:** But we will be voting again after there is a public hearing?

**MARK SEIB:** Yes, we would have the public hearing at the next meeting in June. We have to go through this public portion of it to be able to do it. Just like we do when we have an ordinance change, they have to be notified in the paper and the whole shebang to make sure the public is aware of it that this is being looked at to be changed. Is there anything else? Any other discussion?

Andy Hoehn made a motion in the affirmative to amend fines to \$2,500 - \$7,500 comparable to State limits within the County Ordinances and would include the County, Town of Poseyville and Town of Cynthiana. Motion was seconded by Joe Marvel. **Roll Call Vote (8-0). Yes. Motion passed.**

**MARK SEIB:** Another topic that was brought up was no sign for a complaint. We will open that up for discussion.

**KEITH SPURGEON:** So, what is the logic behind that, why would we?

**JOE MARVEL:** Somebody knows that something is wrong, but they don't want to put their name on it and be the bad guy and report someone.

**RANDY OWENS:** I know a guy who wouldn't make a complaint because he was afraid of retaliation from the person who owned the other property. He lived in a different county; it wasn't Posey County but I was talking to a guy and he really wanted to turn in this guy but he was told he would have to sign the form and the other guy would see it. So that is what stopped him from making the complaint.

**GREG NEWMAN:** From the Commissioners standpoint there have been several things that have been brought up that was not moved forward with because the individual did not want to sign that. So, we are looking at this as trying something different. We realize that there can be a slippery slope or a downside. We are planning on revisiting that at some point if it becomes a problem.



**MARK SEIB:** I talked to Trent the other evening concerning this and what would be basically his feelings on requirements that we would have to if we end up going to court with this. And I guess I have also talked with Mindy about the process taking this kind of report and I guess the other thing is that when we had a person come in and they signed a complaint, they usually brought the documentation or the evidence for somebody doing business out of their home. This person that filed the complaint, we left it with them, and they had to prove that it was a violation. Most of the time we don't have the resources to do the investigation part of that. The person filing the complaint may have seen something on Facebook or on the internet where they are advertising that they are doing business or whatever proof they have that they are doing business. I guess if this is accepted, we are going to have to change our form that we have on our website that says you have to fill it out. I also think that's another situation that if they don't provide that kind of information or documentation to help us understand what the violation is and that proof. I think we also need to put on there that we may not be able to pursue it. If we don't have enough sufficient information, that we can't just continue to try to find it. It becomes a management of time. I think that's something we need to consider whenever we do this. Then we get into the situation where if they don't have to sign it and he kicked my dog and then he files a false complaint, then we have to go through that process of trying to figure that out. I think we almost have to ask for what kind of proof do they have. They don't have to sign their name; the name doesn't go on the form. I also think that there should be a question... if we have questions or if Mindy has questions trying to figure out the issue can we call them. Trent and I talked about how there is such a thing as a folder that when somebody requests, all the documentation goes. So, if there is a phone number in there, that tells them basically where it came from. If somebody files a complaint and then we turn around and Mindy cannot find the evidence and she can't do anything else, so we drop it, but the person that filed the complaint wants to know why and where's it at and what's going on, etc. If we can't contact them, then that creates an issue in doing our due diligence in finding the fault and bringing them before the Area Plan. That's some of the discussions that we had. What's the feeling of the board?

**ANDY HOEHN:** I think in the overall years I've sat on this and watched complaints; I don't know of any that we went back to the signature and asked questions. Everything that comes in, whether it is signed or not signed, has to be investigated. The pictures could be taken or whatever in that investigation. It is simply taken out of the way the possibility of some kind of insult or injury back to the person bringing it. You see this in the police departments. They have call ins, and you don't have to say who you are. But the complaints have led to huge drug busts and different things like that. I think the upside is way better than any of the downside. The downside is a little hypothetical. I understand what it could be. But in reality, that is not what's played out. If it gets to be neighbor versus neighbor and it's not valid, drop it and move on.

**DAVID DAUSMAN:** For it to be a complaint, does it not have to be an ordinance...

**MARK SEIB:** It has to be a violation in the ordinance. But then comes the burden of trying to prove it. I understand what Andy is saying, that if they are parked in the yard or if 40' was the requirement of the setback and they are only 20', I understand that. That's an easy fix. That's easy proof of that. It's the ones that become harder. I think, Mindy, you have gone back to people who have filed complaints and asked them.

**MINDY BOURNE:** Like you said earlier, the home-based businesses are what ring in my head. We had issues with some of those. We had one where they were operating a business out of their garage, and it took us quite a while to prove that. Finally, a bill of sale was...

**ANDY HOEHN:** But that was an APC member as well.

**MARK SEIB:** And it ended up having to get some help to get that job done.

**ANDY HOEHN:** I'm not arguing that some won't go beyond... I'm not seeing where a signature helps in 90% of the cases.

**MARK SEIB:** I'm not saying that it needs a signature, I'm saying we need additional language so that if this person that doesn't want to sign, there be some way of getting into a...

**ANDY HOEHN:** I think we put on the complaint form to please send pictures or evidence.

**RANDY OWENS:** I think it should be said please provide evidence in support of the complaint and a failure to do so may result in the complaint not being investigated.

**MARK SEIB:** And that is exactly right. That is what we are trying to get to. We want to take every complaint seriously, but at the same time we are limited to how much time we can spend on it and being able to go through and dig and go on Facebook to try to find all of the websites and everything else. Like we said before, we need a code enforcement officer. It depends on how this all plays out, if we get a lot of these then we are going to need additional person power to take care of the complaints. What Randy has said about putting on there that we need evidence or documentation to validate this as a true complaint, I think that is what we need to change.

**ANDY HOEHN:** That would be helpful.

**RANDY OWENS:** And I think we need to clearly say failure to do so may result in no investigation.

**MARK SEIB:** Or to be able to complete the investigation.

**MINDY BOURNE:** And the other point I want to make too, when someone files a complaint and when I send out the letter to the person they filed the complaint on, I also send it to the person that filed the complaint. That way they know when it's going to be brought before this board and they can be here if they choose to. Maybe we can provide if you want to be contacted of when the public hearing will be conducted or something...

**ATTORNEY TRENT VAN HAAFTEN:** The language is that it is not to be required to provide that. The forms we come up with basically tell them it's not required. You have the option to leave your name to be notified of hearing dates and things of that nature. Someone

may still want all of that. We may want to add language that if you do not provide any identification, it will be upon them to find out when any hearings or anything else that occurs.

**ANDY HOEHN:** Yes, that can be simple as an email address, and they start getting distribution of...

**ATTORNEY TRENT VAN HAAFTEN:** One of the things I am certain about, Andy, if we get any information about them, is how the public access records law would apply to that. If someone makes a complaint against me and there's nothing there maybe I just make that record's request to find out what I can find out. Then the purpose of the anonymity been defeated by that. But, again, if that complainant wants to leave that information so they can be informed of what is going on, more power to them.

**ANDY HOEHN:** All I'm saying is the requirement no longer exists.

**ATTORNEY TRENT VAN HAAFTEN:** Right, and that's how we worded the one for the City.

**MARK SEIB:** It's their choice.

**KEITH SPURGEON:** I struggle with this one. I kind of think they should be required to sign the form and prevent frivolous complaints being made. If somebody has lodged a complaint against me, I have a right to know who is complaining against me. I feel like I should be able to know who is complaining against me. I get what you are saying, and I understand that there are probably people who don't file because my name goes on it, if it's serious enough... If you feel serious enough about it, then stand up and sign your name to it. I think that's not asking too much. I respect what you want to do and if we go ahead and go down that road, that's fine. I suggest if we go down that road, I suggest we do it for both the City and County. I would just rather not go down that road.

**JOE MARVEL:** I think I agree with what you are saying there Keith, more or less. But we don't have anybody that enforces anything right now, so right now we are relying on the citizens to rat your neighbor out when they put an addition on the back of the house. I can take you to Poseyville and drive by five of them that I know of, and I don't live in Poseyville any more. We have people doing things, but no one wants to say anything because they don't want to sign on the dotted line.

**KEITH SPURGEON:** We would still be relying on citizens, right?

**JOE MARVEL:** Yes, but you won't be making someone put their name on the complaint. I've been confused as to why the Assessor knows about all of the additions and never reports anything. I think that is a different discussion.

**RANDY OWENS:** Whether the name is there or not, it's going to be thoroughly investigated. And if there is nothing to it, it will be dropped.

**ANDY HOEHN:** The only way the Assessor knows is if there is a permit issued.

**JOE MARVEL:** No, the Assessor drives around and figures everything out.

**ANDY HOEHN:** Wrong!

**JOE MARVEL:** He's at my house about every other year.

**ANDY HOEHN:** He is not the Assessor.

**JOE MARVEL:** Ok, then it's the guy in the vehicle that says Assessor's Office on the side of it. I pour a yard of concrete and he is like Hey!

**MARK SEIB:** I guess the other question that I just thought of what if it's a member of the Area Plan Commission who files a complaint and we will have to ask if there is a conflict? Because that becomes a conflict.

**JOE MARVEL:** But you ask if there is a conflict every time anyway.

**MARK SEIB:** I guess I am looking at if the person is here to talk about a complaint and we ask if there is a conflict, and you stand up and leave. Wouldn't that be a flag to that person?

**JOE MARVEL:** I think leaving because of a conflict could mean a lot of different things.

**MARK SEIB:** I was just thinking ahead to see what else there might be or if there is an issue we might need to face.

**KEITH SPURGEON:** I guess that is kind of my point or my fear I guess that by doing this we are going to create...I don't know if we really know what we are saying yes to and probably won't know till 2 or 3 years down the road. And see what kind of problems it causes. I don't know. I have always been very leery of the complaints that are not signed.

**JOE MARVEL:** You bring up a valid point.

**GREG NEWMAN:** We did discuss that; we have the same concerns at the Commissioners meeting. I made the motion to move forward with this, but part of that motion was one year we have to at least have a discussion to see how it is working out. So, if it is not working out and it is creating more problems than it is solving, we can re-address it.

**ANDY HOEHN:** I think that is a reasonable approach. What we have now according to...what Mr. Weber was talking about the things that are out there that are not on anybody's list. I think there would be some valid issues out there, that are not on anybody's list because they won't sign on the line. The signing on the line is kind of irrelevant as to whether it is a violation or not. You don't need my name or anybody else's name to know if it is valid or not. If you don't have enough to make a decision you move on. If you have enough to make a decision you follow that channel. It really is irrelevant to my name.

**MARK SEIB:** Is there any other discussion? Andy, I am assuming that motion was for asking the other entities as well.

**ANDY HOEHN:** Yes.

Andy Hoehn made a motion in the affirmative that there no longer is a requirement for a signature to complaint process to County Ordinances. Motion was seconded by Greg Newman. **Roll Call Vote (7-1). Yes. Motion passed.**

**ATTORNEY TRENT VANHAAFTEN:** Those will be prepared so there can be a public hearing at the next meeting.

**APPROVAL OF PAYROLL AND BILLS:** Joe Marvel made a motion in the affirmative to accept and approve the payroll and bills as presented. Motion was seconded by Andy Hoehn. **Roll Call Vote (8-0). Yes. Motion passed.**

**REPORT OF COLLECTIONS:** Joe Marvel made a motion in the affirmative to accept and approve the collections as presented. Motion was seconded by Keith Spurgeon. **Roll Call Vote (8-0). Yes. Motion passed.**

**MARK SEIB:** Next item we have is citizens concerns. Is there anyone here wishing to speak to the Area Plan? If you are, please come forward and state your name and home address please for the record.

**DEENA STOLZ:** My name is Deena Stolz, I live at 5246 S. Bohleber Rd. in Evansville, Indiana. So, we have an issue with the Area Plan Office that we have been experiencing. I was just informed at the last meeting that apparently they filed an appeal on our behalf that I wasn't aware of. So, I am not supposed to talk about that issue, but I would not be talking about what you would be voting on the actual issue its self. I would just like to make you aware of what we have been experiencing with the office. So, not talking about the issue itself but talking about our issue with the office. We called the office to apply for a permit on about the 10<sup>th</sup> of April and we were told we couldn't get one. So, this was tenant that is going to be renting our property so my husband called and said Hey, our tenant called and was told we can't do this. Use the property the way we have been using for 30 years. But we have a non-conformance so we should be able to still do this. He was also told no you can't do this. So, I sent an email and I copied the non-conformance and asking why that did not apply to us? Was told that because of something the timing that we applied for the permit was incorrect and so we wouldn't be given the nonconformance. So, I emailed back and said well looking at the regulation no where says you have to do it in a specific order. We followed the regulation as it was exactly written and did the items that it outlined that we needed to do, we did those items. And they said it doesn't matter you can't do it. The last email I sent was on the 18<sup>th</sup>, I believe, 20<sup>th</sup> of April. I said OK, if this is the case I see here that it says if you disagree you can file for an appeal. So is your email to me saying you can't do this, is that considered the decision that I need to appeal. How do I file the appeal, who do I, it says to send the appeal to the secretary. Who is the secretary and what is the secretary's email address because that is not on the website. Can you please explain

to me how this process is supposed to work. We never received an email back ever! Nothing, so in the last meeting they mentioned us not contacting any members or talking to them outside of the hearing. We did that because the office refused to answer and because they would not guide us in the process of how we are supposed to do this. We're not somebody that did something we weren't supposed to we were trying to follow the process as it is written, in good faith and being told that we still weren't doing it correctly. So, I don't know if there is a process for filing a formal complaint but I think in Posey County taxpayers have the right to be guided through the process to understand the process if it is not written out step by step how you do it then we depend on people in the office to help us with that process and we have not received that help.

**MARK SEIB:** Are you done?

**DEENA STOLZ:** If you would like me to be.

**ATTORNEY TRENT VAN HAAFTEN:** I know when it was first brought to my attention, I understood that your issue is going to be resolved by the BZA. The whole purpose of the decision of the Administrator, if it is disagreed with, you appeal and it is determined by the BZA. What I learned at some point in time, there may have been an indication that you had an attorney. It may have been stated to Mindy or the Office that you had an attorney. Those types of things trigger responses.

**DEENA STOLZ:** Actually, she mentioned the County Attorney first.

**ATTORNEY TRENT VAN HAAFTEN:** My understanding is you may have mentioned you had an attorney.

**DEENA STOLZ:** My quote was I intend to follow the process through the way it is written and we will do that but if we are unable to do that and we have to go to court we will do that.

**ATTORNEY TRENT VAN HAAFTEN:** I know when attorneys are mentioned it is very similar to if somebody calls me and says they have an attorney, ethically I can't talk to them. I have to communicate through the attorney. That is just our rules of professional responsibility so I think that may have been my observation, that may have been part of it and I think there may have been just some confusion in regards to the entire process. Because in my time here this is the first time that there had been a need or a desire for the appeal process. So, that moved over to the BZA attorney and again there was an concern that we couldn't talk to you directly because you had an attorney and there was process that was put in place. I think that I wasn't here at the BZA meeting, but I think that process was in play such that the ordinance calls that if someone disagrees with a decision of the director then they are allowed to appeal that and there is a process there. That may be the stage you will be at.

**DEENA STOLZ:** Just for the record, I do not have an attorney yet. We wanted to; I don't think I should have to pay for an attorney when I am trying to follow the process the way it was written.

**ATTORNEY TRENT VAN HAAFTEN:** I will also say that is one of the areas that it happens in all types of situations. If you go to the Council, if you go to the Commissioners or if you go wherever. It is we want to do this, a lot of times you have to take that upon yourself to do it, whatever it may be.

**DEENA STOLZ:** Sure, and I read it front to back and no where does it say what we were quoted as to the way we violated it.

**ATTORNEY TRENT VAN HAAFTEN:** That is going to be up to the BZA. I know the whole word of existing is an issue, but I think it may have been messy getting here, but you are in the process now and you are going to have your opportunity to deal with it with the BZA and get an outcome. This is not directed to your question, but I will also respond to you. I know you emailed me, you emailed me about 15 minutes after I got an email from the BZA attorney laying everything out and you emailed me about two hours before I was leaving on vacation. Now that may not mean anything to anybody else, but I ignored you. I wasn't purposely ignoring you in terms of not wanting to respond, but I didn't respond for those different reasons because it didn't fall in my bailiwick at the time.

**DEENA STOLZ:** Well, for just on the record that we, the reason we contacted people was because we couldn't not get an answer from the office and we didn't know how to proceed with our complaint. So I don't know if there is a process for a formal complaint against someone but.

**ATTORNEY TRENT VAN HAAFTEN:** Obviously it has been made here this evening.

**GREG NEWMAN:** Can I ask then is this on the agenda for the BZA in June?

**MARK SEIB:** Yes, it is. Beth McFadin Higgins explained the process to the board and to them as well that they considered her email that she sent as asking for an appeal to be made on her behalf for what was sent on her email and that Beth has already scheduled that for the June meeting for the BZA to take that up. Again, with that being said, Beth explained that it has to be advertised, it has to have a public notification and the whole shebang and that was why we couldn't take it up today. It would have to be moved to that June meeting.

**ROBERT STOLTZ:** 5246 S. Bohleber Rd., Evansville, IN 47712. I understand what you're saying about we were going to get a lawyer. But I think we at least deserved an email back stating why we never got a reply. We never got anything stating why we were not getting responded to. So that is why we went to some of the board members trying to get some answers. We thought as taxpayers, we paid property tax that was never late that we deserved some sort of answer. I mean our taxes pay the salaries of the boards and the offices and I don't think that is fair to us.

**ANDY HOEHN:** Are you satisfied with where things are now, do you feel like you are in the loop?

**ROBERT STOLTZ:** Well, we didn't even know about this appeal by the attorney until tonight. We were blindsided by that.

**ANDY HOEHN:** So, are you saying you are still confused by the process. Did Beth Higgins talk to you guys?

**ROBERT STOLTZ:** No, she didn't talk to us directly, she talked to the board in the meeting prior to this. I just don't feel like taxpayers should be treated like we were treated. We did nothing wrong, we tried to follow the rules to the best of our ability.

**ANDY HOEHN:** I agree, I am trying to get to the bottom of what is going on here. Did Beth talk to them, did you just say that?

**ATTORNEY TRENT VAN HAAFTEN:** No. Understand that Beth represents the BZA like I represent the APC. If any member of the public came to me and said I need you to basically guide me through this process, you have those circumstances where, as Beth said, you are on opposing sides. So, you can't as a lawyer work both sides. Hopefully they go out and get counsel in terms of getting through the process. That is why we have attorneys that show up with people making petitions. So, what I said is my understanding was that reference was made that they have an attorney. That is the red flag that goes up.

**ANDY HOEHN:** Ok, but at this point they are saying they don't, so what should....

**ATTORNEY TRENT VAN HAAFTEN:** At this point, because of all my understanding because of all that. Well, I will put it this way, my thought was there was going to be a formal letter that was mailed to them saying that this is not allowed, that the decision being this was not allowed. So that is the official action. Then the ordinance gives the individual who disagrees with that 10 days to file an appeal. What it sounds to me like, instead of doing that, it extended out. Beth and the BZA have said that we are aware of what the situation is, we are aware that you want to appeal so we are going to take what has happened so far as an order and a request for an appeal and you are going to have your hearing on June 11<sup>th</sup>.

**ANDY HOEHN:** But that was their communication back to them.

**KEITH SPURGEON:** They were told that tonight. Beth didn't address them like specifically, let's you and I talk. She addressed the public at a board meeting. Like right now, I am not talking to that guy individually, but he is hearing what is going on. And that is how Beth did it. She explained to the board. Kind of gave us the background of what had happened.

**ANDY HOEHN:** And that was tonight?

**KEITH SPURGEON:** Yes, that was tonight. Just prior to this. And I think part of it was their concern, I am not sure of what all the timelines are but I think there was some concern about timelines. And if they made them go through the timeline now of submitting an official complaint that there might be a timeline that would be missed. It was Beth who took one of the prior emails that they sent to be the official complaint. So, they didn't get looped in a technicality of the timelines. That was kind of why they filed on their behalf. I assume it was OK with you guys that you want that complaint to go forward.



**ROBERT STOLTZ:** Sure.

**DEENA STOLTZ:** Sure, so on April 20<sup>th</sup> my email I specifically said that obviously we do not want to pay for an attorney until we have exhausted all our appeals with this board, but we also want to ensure we are being guided accurately and fairly through the process and my previous questions about the next steps have been ignored. We are in good faith trying to navigate the process correctly and secure the continued use of our property as it has been used for the last 30 years. April 20<sup>th</sup>, nothing since then. Not a word from anyone, so as a taxpayer I am really disappointed. My husband is an Evansville Firefighter, so we understand about working for the taxpayers. He can't say, I don't like that guy, so I am not going to put the fire out at his house. You don't do that. That is not how you treat people, that is not customer service. I work for a corporation you don't serve people that way and you don't treat people that way and I think it is really wrong.

**ANDY HOEHN:** Is there a letter coming?

**ATTORNEY TRENT VAN HAAFTEN:** If there would have been a letter there would have been concern about getting proper public hearing out so the appeal would have been pushed to the July meeting. So, by acknowledging the prior stuff they are able to get them on at the June hearing. So, I think that is what happened in BZA, instead of taking those steps and pushing them to July, say hey, we have all this we are going to recognize it as the notice and the request for appeal so they can be here June instead of July.

**JOE MARVEL:** Cause they would have filed their appeal by April 13<sup>th</sup> to be valid for tonight?

**MARK SEIB:** Yes.

**DEENA STOLTZ:** But we never received a decision to appeal, so we didn't know if just an email was enough to say OK, that is a decision and that is appealable or do we need something else. We were not allowed to file anything we weren't allowed....I mean...

**ROBERT STOLTZ:** That is why we went to some of the board members just to try to get some clarification of what our process is.

**DEENA STOLTZ:** To figure out what we should do next.

**MARK SEIB:** So, I guess you understand the appeal has been made?

**ROBERT STOLTZ:** Now we do, yes.

**MARK SEIB:** So you understand that the appeal has been made, my suggestion is that if you have any questions concerning this, since you can't talk to any of us, that you talk to Beth McFadin-Higgins. Call here and she will give you the guidelines of the procedure that will be gone through if you have any of those questions. You won't have to do anything else because the appeal was made at the meeting. The appeal was recorded and done at the meeting so then

now the notification into the public paper that will be held then and going from there. But if you have any additional questions you need to talk to the BZA attorney and that is Beth. And she will give you the guidelines.

**DEENA STOLTZ:** I would like to say too that we have lost several months income from this, rental income and maybe lose a renter who doesn't want to wait around until this process is finished. Because we were ignored by the office.

**MARK SEIB:** You don't want to wait around for what?

**DEENA STOLTZ:** I said we may lose a tenant who doesn't want to wait to rent the property until all of this process is through.

**MARK SEIB:** I understand but unfortunately the wheels of government do not move extremely fast and because of the notification process that we have only one paper in the county we can't have another meeting before that. So that is why it is taking, that is why we have the deadlines of the day of the meeting is the deadline for next month's meeting in order to make all of the statutory that we are required by the state to make the notifications and that is why we can't have anything quicker than that.

**ROBERT STOLTZ:** But from April 20th til today no response is that acceptable to the board, for Posey County to operate like that?

**MARK SEIB:** I can't answer that. I can just say that there is like Trent explained there is triggers that happen whenever we hear attorney involved in it that we are bound by not having any more communications and letting the attorneys talk. So, I don't know any more about that and we can't discuss that any farther and being able to go from there that will all be brought up and discussed at the BZA meeting.

**ROBERT STOLTZ:** Thank you for your time.

**MARK SEIB:** Is there any other citizens concerns? Any other citizens' concerns? Ok, the only other piece of information is at the BZA is got a full docket next week. We meet at 6:00 and they start at 5:00, do not anticipate starting at 6:00.

**ANDY HOEHN:** Next month?

**MARK SEIB:** Yes, I am sorry, next month our June meeting. Come a little bit later. Is there a motion to adjourn?

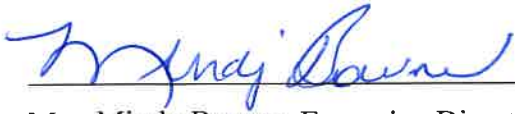
## **ADJOURNMENT**

Joe Marvel made a motion to adjourn the meeting at 7:46 p.m. **Motion carried.**



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Mr. Mark Seib – President



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Mrs. Mindy Bourne, Executive Director

FINDINGS OF FACT  
Billwell Properties LLC

I, Keith Spurgeon, 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 B-3 and is compatible with surrounding land use. Existing restaurant/tavern.
2. Water, sewer, and other utilities are available. Not applicable for this project.
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. Accessibility is improving. Double parking will be eliminated.
4. The plan meets the setback requirements for the B-3 District.
5. The plan meets the building coverage requirements for the B-3 District.
6. The plan meets building separation.
7. The plan meets vehicle and pedestrian circulation. Improving accessibility.
8. The plan meets parking requirements. Ample amount of parking spaces (135 spaces). Improving parking and getting parking into compliance.
9. Landscaping. Not applicable.
10. Building Specs. 1780 sq. ft. concrete patio, railing/steps/handicap ramp
11. Signage. Revamping original sign.
12. Recreation space.-Not applicable.
13. The plan meets outdoor lighting requirement. Will be adding parking lot pole lights-possibly have on timers to not disturb surrounding residential neighbors.
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. The use does require a Special Use.

Motion seconded by: Greg Newman

Adopted by Posey County Area Plan Commission

Mark Seel  
President, Posey County Area Plan Commission

5-11-23  
Date

April 6, 2023

Staff Comments: The property being petitioned to be rezoned from A (Agricultural) to B-3 (Commercial High Intensity) is .275 acres more or less. The property is located at 11331 Water Tank Road, Cynthiana, IN. Property abutting this site is owned by the following:

1. Koester Bros. Holdings, LLC, 11927 Diamond Island, Wadesville, IN 47638
2. Bryan G. & Amanda M. Smith, 11330 Water Tank Rd., Cynthiana, IN 47612
3. Janet Heldt Baas, 7199 Stonebridge Rd., Newburgh, IN 47630
4. Marilyn E. May Trustee, 10001 S. Oswego S. Apt 340, Parker, CO 80134
5. Cecile R. Martin Etal, 14541 Graves Ln., Evansville, IN 47720

Abutting properties are zoned A (Agricultural). This property is currently agricultural. The owners are proposing to rezone the property to B-3 (Commercial High Intensity). The uses adjacent to the proposed rezoning are as follows: Agricultural and Residential.



Favorable recommendation by the APC

Unfavorable recommendation by the APC

No recommendation by the APC

PROPOSED FINDINGS OF FACT  
ON DOCKET NO: 23-03-RE-APC  
PETITION TO REZONE: Nicole Meny  
OWNER: Zachary & Nicole Meny

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

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

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**2. Responsible development and growth.**

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

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**3. Comprehensive Plan.**

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

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**4. The conservation of property values throughout the jurisdiction.**

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

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

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

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Motion made to adopt the foregoing findings of fact by:

*Andy Hehn*

Motion seconded by:

*Joe Marvel*

Adopted by Posey County Area Plan Commission

President: *[Signature]*

Date: *5-11-23*

2023-01-SECS-3-APR

Scott &amp; Heather Hedrick

MOTION MADE BY: Andy Hoehn FOR APPROVALSECOND MADE BY: Keith Spurgeon FOR APPROVAL

Mike Baehl ( ) Yes ( ) No

Greg Newman (☒) Yes ( ) NoDavid Dausman (☒) Yes ( ) NoRandy Owens (☒) Yes ( ) NoAndy Hoehn (☒) Yes ( ) NoMark Seib (☒) Yes ( ) NoJoe Marvel (☒) Yes ( ) NoKeith Spurgeon (☒) Yes ( ) NoStefani Miller (☒) Yes ( ) NoAPPROVED: (☒) Yes ( ) No

If approved, are there any reasonable restrictions or provisions to be included in the plan in addition to those outlined above?

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\_\_\_\_\_

\_\_\_\_\_

MOTION MADE BY: \_\_\_\_\_ FOR DISAPPROVAL

SECOND MADE BY: \_\_\_\_\_ FOR DISAPPROVAL

Mike Baehl ( ) Yes ( ) No

Greg Newman ( ) Yes ( ) No

David Dausman ( ) Yes ( ) No

Randy Owens ( ) Yes ( ) No

Andy Hoehn ( ) Yes ( ) No

Mark Seib ( ) Yes ( ) No

Joe Marvel ( ) Yes ( ) No

Keith Spurgeon ( ) Yes ( ) No

Stefani Miller ( ) Yes ( ) No

DISAPPROVED: ( ) Yes ( ) No



EXHIBIT A (3 pages)









