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A regular meeting of the Hendricks County Area Plan Commission was held on Tuesday, February 13, 2009 at 6:30 p.m. in Meeting Rooms 4 & 5 of the Hendricks County Government Center, 355 South Washington Street, Danville, Indiana 46122. Members present were: Mr. C. Richard Whicker, President; Mrs. Jo Ann Groves, Vice-President; Mrs. Sonnie Johnston; Mr. Brad Whicker; Mr. Eric Wathen; and Dr. Russell Hodgkin. Member absent was: Jon Cain. Staff members present were: Mr. Don F. Reitz, AICP, Secretary and Director of Planning; Mr. John Ayers, County Engineer; Mr. Dan Zielinski, Acting County Attorney; Mr. Brett Pickett, Deputy Surveyor; Mrs. Lesa Ternet, Planner; Mr. Eric Fazzini, Plan Technician; and Mrs. Joanne Garcia, Recording Secretary.

Mr. Whicker stated that there was a quorum present with six (6) voting members. Mr. Whicker then opened the meeting with the Pledge of Allegiance.

Mr. Whicker stated that the first order of business was approval of the minutes for the January 13, 2009 meeting.

There being no corrections or additions, Mr. Wathen made a motion to grant approval for the January 13, 2009 minutes.

Dr. Hodgkin seconded the motion.

FOR – 6 – AGAINST – 0 – ABSTAINED – 0 –

Mr. Whicker then stated that the following matters had continuances requested by the applicants as follows:

MAP 722/08 (AMENDMENT): 70 WEST COMMERCE PARK (ROAD ONLY)
ZA 394/09: NEW WINCHESTER PROPERTIES, LLC

Mrs. Johnston made a motion to grant a thirty (30) day continuance for the above matters to the March 10, 2009 Plan Commission meeting.

Mr. Brad Whicker seconded the motion.

FOR – 6 – AGAINST – 0 – ABSTAINED – 0 –

Mr. Whicker then called for the first item on the agenda as follows:

ZA 393/09: HALL INVESTMENTS; a zoning amendment change from HB/Highway Business District and AGR/Agriculture Residential District to AGR/Agriculture Residential District and HB/Highway Business District, 9.96 acres, Liberty Township, S11-T14N-R1W, located on the west side of State Road 39, approximately 0.75 mile south of U.S. Highway 40. (Comer Law Office)

Mr. Ben Comer of the Comer Law Office and Mr. John Hall of Hall Investments appeared. Mr. Comer reviewed the location of the property. He stated that the entire tract was 59 acres and located within that tract was a 15 acre tract along State Road 39 that was zoned Highway Business. He stated that they were requesting to rearrange the alignment of that 15 acre tract. He stated their request was to remove 5 acres on the north end and move it to the west end. He stated they felt the change would benefit the area by separating the residences to the north from the Highway Business zoning and moved a line of the property back to the edge of the woods so that there was a natural buffer to the west. He stated that the major reason for the request was to locate a church on the north end, that being the Clayton Assembly of God. He stated the church wished to purchase the property but the rezoning request had to be approved first. He stated that the switch from HB to AGR would allow the church to locate on that 5 acre tract. He stated that the seller would not then lose any acreage under the HB zoning classification. Mr. Comer stated that he believed the change would benefit the area and would be a more favorable alignment. He stated that the staff, however, was not favorable to their request. He stated he

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understood their position but believed that a factor to consider was that their particular request would not create any harm to the area.

Mr. Whicker then asked Mr. Reitz to explain the staff's position on the matter.

Mr. Reitz then explained that there were two parts to the applicant's proposal. He stated that one part was the conversion of HB to AGR, which he stated made sense from a land use standpoint. He stated that the other half of the request from AGR to HB constituted what the staff believed was considered to be "spot zoning." He stated it was a small change benefitting a single landowner for a purpose that was not consistent with the recommendations of the Comprehensive Plan. He stated they believed that, typically, it was not considered good zoning or planning. He stated that the staff had laid out in their comments in letter dated February 3, 2009 why they believed that was the case. He stated that beyond "spot zoning," the staff had emphasized the fact that neither the Land Use Plan nor State Road 39's designation as a Major Corridor really supported the HB rezoning in any way. He stated that there was no land use basis nor economic development basis or any benefit to transportation planning in the Comprehensive Plan that supported that recommendation. He stated that the staff's letter also discussed the intent of the HB zoning district, which would not make sense in this particular location. He stated that there was neither infrastructure to support it nor any planning basis to support non-residential development. He stated that although he agreed that the rezoning request would not create any harm, after listing the statutory requirements for the Plan Commission to approve this request, there was nothing in those requirements which stated that the rezoning could be approved because it "did no harm" to the community.

After a question from the President, Mr. Reitz responded that the reason there was no planning concern on the down zoning from HB to AGR was because that was consistent with the recommendation of the Comprehensive Plan for rural residential and suburban residential uses. He stated that the flip side of that as to the up zoning from AGR to HB did not have support in any planned precedent or policy of the Plan Commission.

Mr. Whicker then called for questions from the Commission.

Mr. Wathen then commented that he believed in the past a previous Plan Commission had found a reason to rezone the property to Highway Business and the current request did not increase or decrease the size of that zoning district. He stated that from his standpoint, he did not see any problem with changing or moving the existing zoning from one side of the property to the other.

Mr. Brad Whicker stated he was in agreement with Mr. Wathen's comments in that ultimately it was one parcel of ground with the Highway Business zoning being enlarged to the south.

Mr. Whicker stated that he was present in 1996 when the current zoning was approved and he had voted against that recommendation. He stated his vote would be the same for the present request as he felt the roadway was a valuable corridor. He stated that he believed the applicant had created their own hardship by selling off the north part of the property and he believed whether or not the zoning was being enlarged, he did not feel it was appropriate for that corridor and he would not agree to an acre for acre change.

Mrs. Groves commented that in regard to the committees that served to develop the new Comprehensive Plan and the new Zoning Ordinance, she believed that the public desired for the existing residential zoning along that State Road 39 corridor to stay the same as it needed to be a special overall plan. She gave a comparison of the U.S. 36 corridor between Danville and Avon. She stated she believed the overall planning down that corridor should be made prior to any changes to the existing zoning. She also stated that she believed a church use would fit in and would not be against the AGR zoning change.

Mr. Wathen asked what was the distance from the current application to the existing Cables for Less property.

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Mrs. Groves responded she believed it was approximately four and one half miles from the Town of Belleville to the interstate.

Mr. Reitz commented that the Major Corridor designation in the Comprehensive Plan, of which State Road 39 was one, had planning consequences tied to it. He stated that the argument was made that there were a number of major corridors in the county and they should be planned in some kind of uniform or cohesive fashion. He stated it was decided that in the Comp Plan for the time being, there would be a limit to corridor or overlay reviews to the Ronald Reagan Parkway and U.S. Highway 36. He stated that State Road 39 was also one of those with a determination being made that at some point when it looked like these areas were prime for development, that those corridors be handled as a single corridor and planned comprehensively down the entire length in a way that made sense. He stated that State Road 39 was also part of a regional transportation plan which needed to be maintained as well.

Mr. Wathen commented that he did not agree with just doing nothing to the 15 acres at this time.

Mr. Brad Whicker asked what would happen if the current request was sent to the Commissioners with an unfavorable recommendation and Mr. Hall came back with a specific plan to expand on the parcel of Highway Business zoning. He asked if it would be reasonable to expect a request would be granted at that time based on the usage.

Mr. Whicker stated he did not believe that would be unreasonable. He stated he felt it would be unreasonable to state it would be out of the question. He stated he was arguing philosophically.

Mrs. Groves stated she agreed and that any request to allow a usage that fit in with the existing Highway Business zoning could not be denied. She stated that past planning by the committees had encouraged some type of overall plan to be developed quickly for that corridor before it began to be developed.

Mr. Brad Whicker stated he understood the points made. He stated he did not believe the request was "spot zoning."

Mr. Whicker asked for further questions or comments. There being none, Mr. Whicker opened the public hearing. There being no one signed up to be heard, Mr. Whicker closed the public hearing.

There being no more questions or comments, Mr. Whicker called for a recommendation.

Mr. Wathen then made a motion to send a favorable recommendation to the Hendricks County Board of Commissioners for **ZA 393/09: Hall Investments** to rezone the property from HB/Highway Business District and AGR/Agriculture Residential District to AGR/Residential District and HB/Highway Business District as presented.

Mr. Brad Whicker seconded the motion with Mr. Dick Whicker, Mrs. Groves, Mrs. Johnston and Dr. Hodgkin against the motion.

FOR – 2 – AGAINST – 4 – ABSTAINED – 0 –

Mr. Whicker stated that since the motion did not carry, the matter would be sent to the Board of County Commissioners with an unfavorable recommendation.

Mr. Wathen asked if the applicant wished for another formal motion to be made.

Mr. Comer stated at this point he believed the motion made was for the petition as presented.

This matter would be heard by the Board of County Commissioners on Tuesday, February 24, 2009 at 9:30 a.m. or thereafter.

The staff recommendations were as follows:

Staff Comments:

Background

The property under consideration was part of a rezoning that took place in 1996. The rezoning was an element of a proposal to permit an asphalt plant to operate at this location (the use is no longer permitted in the HB zoning district). That rezoning—from R-1/Residential to HB/Highway Business—received a unanimously unfavorable recommendation from the Plan Commission (ZA 112).

The Board of Commissioners reversed the Plan Commission’s recommendation and approved the rezoning with two changes: (1) That the use “asphalt plant” would be removed from the list of permitted uses in the HB zoning district, and (2) that half of the rezoned property would revert to its original R-1 zoning (that is, not be subject to the rezoning). Although the record is not absolutely clear, it appears that asphalt plants were excluded from the uses permitted on the property under consideration—which was the ostensible reason for the rezoning in the first place.

Lack of zoning precedent. Given that the area of the rezoning proved fluid, that the use presented as the reason for the rezoning was excluded from the permitted uses on the property, and that there was no obvious planning or zoning support for the proposal, there is no basis to consider the 1996 rezoning as having established a precedent supporting subsequent HB rezonings.

Current Situation

The applicant wishes to swap zoning designations for two purposes: (1) To rezone from HB to AGR to allow a church to locate on an HB zoned portion of the applicant’s property (churches are not permitted in the HB zoning district), and (2) rezone an AGR zoned portion of the applicant’s property to HB so that he has no net loss of HB zoned acreage resulting from the HB to AGR rezoning. While staff finds no problem with the HB to AGR downzoning (AGR being a district with uses compatible with current and planned land use patterns in the area), we do have several concerns about the AGR to HB rezoning.

Spot zoning. Definition: *Rezoning a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan.*

This petition is an example of spot zoning. It serves no purpose other than to benefit a single property owner, it is not consistent with the comprehensive plan (see below), and it is inconsistent with sound planning practice. An argument may be made that spot zoning cannot occur in this instance as HB zoning already exists. This is incorrect for two reasons: (1) It is the *uses* surrounding a proposed rezoning that matter when considering spot zoning, not the actual *zoning*. In this case, the surrounding uses are, regardless of the zoning, agricultural and rural residential, uses not compatible with the proposed non-residential zoning. (2) As discussed above, no precedent has been established by the 1996 HB rezoning given the qualifications placed on it.

Comprehensive plan.

Land use plan: The Hendricks County land use plan recommends that area under consideration be reserved for suburban residential and rural residential uses. There is no suggestion that non-residential uses are appropriate or desirable.

Major corridor: The comprehensive plan designates SR 39 as a major corridor. It is also a main corridor in the 2005 *Central Indiana Suburban Transportation and Mobility Study*. The comprehensive plan’s “major corridor” designation is applied to those road corridors that

should be subject to corridor-specific planning before major land use decisions are made along them so as to benefit economic development and maintain the corridors' transportation function in the face of development.

The proposed rezoning has no land use, economic development, or transportation support in the comprehensive plan. This position is consistent with labeling the proposal as "spot zoning" (i.e., it doesn't further the comprehensive plan).

Intent of the HB zoning district. The intent of the HB district is to locate "business and institutional uses that serve a regional market[.]" Given the rural location of the proposal and its lack of urban infrastructure, there is no obvious foundation for considering it suitable for a use serving a regional market. (This is in contrast to the comprehensive plan-approved provision of infrastructure at I-70 Exit 59.) This HB rezoning proposal does not comport with the intent of the HB zoning district. An argument may be made that the existence of HB zoning in the immediate area establishes a precedent for further expansion of that zoning classification. However, as discussed above, the original HB rezoning was ambiguous as to its size and purpose. Therefore, it provides no clear planning or zoning support for subsequent HB rezonings.

The need to rezone for purposes of allowing a church. The applicant wishes to support the location of a church in the area and not lose any of his HB zoned land. However, records show that the applicant has about 200 acres of AGR zoned land fronting on SR 39 where a church can be located without having to rezone any land. Therefore, there is no hardship or difficulty for which action by the Plan Commission serves as a remedy. Although the applicant may find an HB rezoning personally desirable, this is not a basis for approving a rezoning and it supports the contention that this proposal meets the definition of "spot zoning" (i.e., it benefits a property owner at the expense of the comprehensive plan).

Statutory legal standards. State law (and the Commission's findings of fact) establish legal standards that the Plan Commission "shall pay reasonable regard to" when evaluating rezoning petitions. These are the following:

1. The comprehensive plan.
2. Current conditions and the character of current structures and uses in each district.
3. The most desirable use for which the land in each district is adapted.
4. The conservation of property values throughout the jurisdiction.
5. Responsible development and growth.

The proposed rezoning to HB (1) is not consistent with the comprehensive plan, (2) does not take into account the current character and conditions of the area, (3) does not meet any reasonable definition of "desirable use" when considering sound planning practices, and (4) does not represent responsible development and growth when measured against any planning-based criterion.

Conclusion

HB to AGR downzoning. This proposal is desirable from a land use standpoint in that the proposed zoning is more compatible with current and planned development patterns in the area than the existing HB zoning.

AGR to HB rezoning. This proposal to rezone to HB constitutes spot zoning, a practice generally considered undesirable and inconsistent with sound planning practice. Further, it is contrary to the land use recommendations of the County's comprehensive plan and also contrary to the plan's designation of SR 39 as a major corridor. Moreover, the proposal is inconsistent with the intent of the HB zoning classification. Additionally, there is no practical need for this rezoning or any hardship imposed by the zoning ordinance as the applicant already owns many acres of land zoned appropriately for use by a church. Lastly, this petition

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Staff
Recommendation:

does not meet the statutory requirements for granting a rezoning.

Based on the information provided at the time of application, staff recommends the Plan Commission recommend: **DENIAL** of the AGR to HB zoning amendment and **APPROVAL** of the HB to AGR zoning amendment.

DPR 417/09 (PRIMARY): APEX PRECISION TECHNOLOGIES FACILITIES EXPANSION; a development plan review to expand an existing facility, 3.879 acres, Guilford Township, S20-T14N-R2E, located on the west side of Union Mills Drive, approximately .013 mile north of County Line Road. (Civil Designs, LLP)

DPR 417/09 (SECONDARY): APEX PRECISION TECHNOLOGIES FACILITIES EXPANSION; A development plan review to expand an existing facility, 3.879 acres, Guilford Township, S20-T14N-R2E, located on the west side of Union Mills Drive, approximately .013 mile north of County Line Road. (Civil Designs, LLP)

Mr. Jim Peck with Civil Designs, LLP appeared along with Mr. Jerry Jackson, President of Apex; Mr. Terry Bowen, Project Manager for Apex; Mr. Joel Fritz, owner; Mr. Tim Metter, Architect and Mr. Todd Walls with Civil Designs, LLP. Mr. Peck explained that Apex was an existing facility located in the Heartland Crossing Business Park, Lot 81. He stated that the facility was built approximately eight years ago and they wished to expand their facility. He stated they were also trying to comply with the new zoning ordinance. He reviewed the plans for the new expansion, site plan, building elevations and landscaping plan.

Mr. Whicker asked for questions or comments.

Mrs. Groves asked about the preservation of 2% of the total acreage for the new zoning ordinance open space requirement.

Mr. Fazzini stated that the proposed designated location did not qualify as open space because it was within a required setback.

Mr. Wathen asked where else could a location be approved.

Mr. Fazzini proposed another location on the south side of the property.

Mr. Peck stated they may propose another expansion in the future and would not have a problem with that location but that easement might need to be moved somewhere else at another time.

Mr. Wathen asked if it could be moved again.

Mr. Fazzini explained how that could happen.

Mrs. Johnston asked if proof of notice was given to the Airport Authority.

Mr. Peck stated yes.

Mr. Whicker asked about the requirement of 14 feet per lane.

Mr. Peck responded that the existing entrance would be expanded from 24 feet to 28 feet.

Mr. Brad Whicker stated then that in the staff recommendations, the only item not feasible would be the minimum length requirement of 40 feet for the proposed drive.

Mr. Peck stated that was correct and that they could provide 38 feet.

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Mr. Ayers stated they were okay with that proposal.

Mrs. Groves asked about whether semi trailers could be accommodated.

Mr. Peck stated yes and explained.

Mr. Whicker asked about any exterior lighting on the proposed expansion.

Mr. Fazzini stated that wall packs would be used which met the ordinance requirements.

Mr. Reitz then pointed out if the project were approved subject to staff's recommendations, #4 and #5 would be accepted, which, in fact, was accepting the modifications to the landscape ordinance.

Mrs. Groves asked if the staff was in agreement with the landscaping modifications.

Mr. Reitz stated yes and that the applicant had been very cooperative in complying with the staff's recommendations.

Mrs. Groves asked when the motion was approved, it should waive the 40 foot minimum length requirement to 38 feet.

Mr. Whicker then opened the public hearing. There being no one signed up to be heard, Mr. Whicker closed the public hearing.

There being no further discussion, Mr. Whicker called for motions.

Mr. Brad Whicker made a motion to grant primary approval for **DPR 417/09: Apex Precision Technologies Facility Expansion (Primary)** subject to the following conditions:

1. Recommendations and conditions in staff's letter dated February 3, 2009; and
2. Excepting #7 by waiving the 40 foot minimum length requirement and allowing 38 feet for the proposed entrance drive.

Mr. Wathen seconded the motion.

FOR – 6 – AGAINST – 0 – ABSTAINED – 0 –

Mr. Brad Whicker then made a motion to grant secondary approval for **DPR 417/09: Apex Precision Technologies Facility Expansion (Secondary)** subject to the following conditions:

1. Recommendations and conditions in staff's letter dated February 3, 2009;
2. Excepting #7 by waiving the 40 foot minimum length requirement and allowing 38 feet for the proposed entrance drive; and
3. Working with staff on compliance with the new open space requirements as set out in staff recommendation #3.

Mr. Wathen seconded the motion.

FOR – 6 – AGAINST – 0 – ABSTAINED – 0 –

The staff recommendations and conditions were as follows:

DRAINAGE CONDITIONS:

1. Subject to Drainage Board approval and the conditions of the County Surveyor.

STAFF RECOMMENDATIONS:

1. The project engineer must provide an estimate of construction cost and post a performance guarantee prior to the issuance of an Improvement Location Permit.
2. This development is subject to the Non-residential Design Standards in the Hendricks County Zoning Ordinance.
3. As part of the new Open Space requirement, 2% of the total acreage of the site must be preserved as open space through an easement or common area as approved by the County Attorney. This easement or common area, along with the transformer access easement must be recorded prior to issuance of a building permit, and labeled with an instrument number on the final set of plans, as well as cross-referenced to MAP 524, Lot 81.
 - a. The proposed designated location does not qualify as open space because it is within a required setback (yard). The open space must be proposed in a qualified area.
4. Due to existing conditions, the applicant wishes to install the required perimeter parking lot screening as foundation plantings. Staff has no objection to this request as long 50% of the required shrubs (16) are of the evergreen species (HCZO 7.5(F)(1)(a)). Acceptance of this is a modification the commission has the authority to make (HCZO 7.5(M)).
5. Due to existing conditions, the applicant has proposed the Type 2 buffer yard, which is required along the east property line, be installed along the south façade of the expansion. Staff has no objection to this request; acceptance of this is a modification the commission has the authority to make (HCZO 7.5(M)). However, the applicant has discussed the possibility of future expansions southward. Staff recommends that if any expansion causes plantings to be removed, that these plantings be reinstalled with any future expansion.
6. The proposed entrance drive does not meet the minimum width requirement of 14 feet per lane.
7. The proposed entrance drive does not meet the minimum length requirement of 40 feet kept free of parking maneuvers.
8. Curbs are required along the entrance drive into the project and along the interior drive at least through the radius of curve of the drive.

CONDITIONS OF APPROVAL:

1. A properly executed County/Owner Inspection Agreement must be provided prior to secondary approval with all appropriate fees paid prior to the start of any construction.
2. This project is subject to the National Pollutant Discharge Elimination System (NPDES) General Permit covering storm water quality. Procedures there under are governed locally by the Hendricks County Stormwater Management Ordinance and corresponding Technical Standards Manual. An application, fees, construction plans, specifications and Stormwater Pollution Prevention Plan must be presented for approval to the Hendricks County Drainage Board separately from the application to the Hendricks County Area Plan Commission. Secondary Stormwater Approval for a plat, PUD or development plan must be obtained from the Drainage Board prior to Secondary Approval (or Approval in the case of minor plats) by the Plan Commission or its Administrative and Plat Committee. In addition, an Erosion Control Permit issued by the Hendricks County Surveyor is required for individual building lots prior to obtaining a Building Permit from the Planning and Building Department.
3. The Hendricks County Planning and Building Department must be notified at least seventy-two (72) hours prior to any site improvements being installed.
4. The applicant will have one (1) year from the date of approval to obtain an Improvement Location Permit/Building Permit. Should this one (1) year period elapse without the applicant having obtained the appropriate permit, the development plan approval will become null and void.

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5. Development plan approval does not constitute approval of signage unless such approval is expressly granted by the Plan Commission as part of this development plan. Signage review and approval is typically carried out as a permitting process separate from development plan approval.
6. No Improvement Location Permit/Building Permit shall be issued until any plat associated with Secondary Development Plan Review has been recorded.
7. A State Plan Release is also required for multifamily, residential and non-residential (commercial and industrial) projects. In no way will a Development Plan Review be construed as a substitute or a waiver for these other required permits.

That completed the agenda. Mr. Whicker called on Mr. Reitz for any staff discussion.

Mr. Reitz then stated that in December of 2008 the Plan Commission had requested that the staff look at instituting performance evaluations. He stated that an evaluation form had been provided to the members in their packets. Mr. Reitz stated he had then asked the members to provide recommendations on said form.

Mr. Whicker asked Dr. Hodgkin what his opinion was of the form.

Dr. Hodgkin stated that he thought the form was good and headed in the right direction. He stated he felt it was workable and manageable and a good assessment tool. He discussed the goals proposed by staff members and how to assess those. He stated he believed that the strategies to accomplish the goal were more important than the goal itself.

Mr. Wathen stated that he felt the form was fair.

Mr. Whicker stated that it was similar to forms he had seen in the past.

Mr. Reitz stated that since everyone was in agreement, he would implement the process.

There being no further discussion, Mr. Whicker adjourned the meeting at 7:22 p.m.

Don F. Reitz, AICP, Secretary