

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, March 13, 2023, 6:00 PM

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Richard Reid, Jeff Willis, Doris Horn, Jeff Valiant, Amanda Mosiman and Greg Webb. Bob Johnson was absent.

Also present were Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Katelyn Cron, Assistant Director.

**MINUTES:** To approve the Minutes from the last regular meeting held February 13, 2023. Doris Horn made a motion to approve the minutes as distributed, Richard Reid seconded the motion and it carried unanimously.

President Valiant said it looks like we have a few items on the agenda tonight. The primary plats that come out tonight will be final here, rezoning's will go to the next Commissioner's meeting which is on...

Mrs. Barnhill said April 10<sup>th</sup>.

President Valiant reiterated April 10<sup>th</sup>, in this room right here.

**Petition to Incorporate Town of Victoria Woods, Indiana:** Part of Section 5, 8, & 17-6-8 Boon Twp. *Complete legal on file. (Advertised in the Standard on February 2, 2023) Continued from February 13, 2023.*

Jordan Aigner, Representing Oakland Holdings, Owner, was present.

Jordan Aigner said so we gave quite a long presentation last time and I was happy to have it continued so you guys could think through it and come up with any more questions you might have. He said I can answer anything now if you have more questions or if there is any further detail you might be needing.

President Valiant said alright, I will open it up to the Board. He asked does anybody have any further questions for Mr. Aigner.

Jordan Aigner said if there is nothing that comes...

Amanda Mosiman said so...

Jordan Aigner continued off the top of your mind, I do want to tell you that over the past weeks we felt that it might be good to have a third party take a look at our financial impact study basically, so we did that, and we were able to work with the county's financial advisor, a lot of the times is Baker Tilly, and as a third party they were able to take a look at our study that way both boards, both your Board and the Commissioner's aren't just taking our word for it. He said they had an independent review of it and so they just got that back on Friday, I think. He said I briefly talked to Krystal Powless at the County Council and she said she received everything and got it out to various board members on the Council. He said I know there were some questions about the tax implications and so some of that, a lot of that, was sure up from their study. He said I can tell you some thoughts that I have about it if you're interested but I don't want to speak for them but we did have a third party take a look at that and basically our numbers were validated and if you want to talk to Krystal you could but certainly the Commissioner's before they would make a decision would be able to go into a deeper dive with Krystal or the Council if they believe they need to.

President Valiant said thank you sir. He said Amanda you started, did you have a question.

Amanda Mosiman said yeah I started with something and then we started with that train of thought so what were your... go ahead while we are on that topic of discussion, I would be interested to hear your take away from it.

Jordan Aigner said alright, sure.

Amanda Mosiman asked are we entering the Baker Tilly thing on our part of record. She said I assume not because we have not seen it.

Attorney Doll asked do you have a copy for the Board.

Jordan Aigner said I do, I am sorry I don't have many copies. He said I have one hard copy, I can email it to you and, like I said, the council has it and Krystal has it electronically.

Attorney Doll said it would be better if we are going to quote from it or refer to it Jordan if you could present the Board with a copy of it.

Mrs. Barnhill asked is that your only copy or...

Jordan Aigner said that is my only hard copy tonight, yeah.

Mrs. Barnhill said I mean we can run copies if we need some for the Board.

Jordan Aigner said okay.

Amanda Mosiman said thanks.

Jordan Aigner said so and you should know, and this Board was not in the email chain. He said we were going to have more of a work session with our team and the County's team to dive into it a little deeper. He said it made sense to just go ahead and have Baker Tilly do a full review. He said so we postponed any kind of session to say, hey, were not going to get anywhere with a meeting let's just go ahead and get a third party review so that is what was done and so out of that I am going to review bullet points that basically came to fruition after reviewing the study. He said the Incorporation of Victoria Woods will have no impact on the county's ability to issue bonds for the upcoming security center or jail project, and this is out of two financial advisors looking at their data and these are the responses. He continued the potential impact of LIT Revenues on the county in future years as a result of the incorporation is minimal. He added the development of this project is positive for the entire county and there is a minimal likelihood that there will be a negative impact to the County and other units, so in doing that and I am going to go kind of in layman terms here, they did two scenarios. He said they said hey, lets do what would be a run of the mill kind of likely event that the economic income growth is going to happen for about 3% for the county, so if that is the case what does it look like at the end of 10 years. He said remember we were kind of just pulling out a 10 year average of what is going to happen and that showed that there would be well, she took my number so I don't have the number in front of me, but there was a growth of about 17% more dollars that were happening as a part of the growth that we were presenting for our project. He said so this kind of give back to that bigger pie conversation we talked about. He said then they did of course a what if there was zero growth, what impact would it have for the county and they said it was very unlikely that this scenario would occur but it did have some data on that and so I said lets run a, they added some supplemental data, when was the last time we had zero growth both from income and the tax levy and for the last 10 years that has never happened. He added so to look at that zero growth scenario, I wanted to have some numbers to say well you know, is that even realistic and in the past 10 years it has not even happened. He said so all this was to say basically yes, we do not think it is going to be in an adverse effect to be able to forward these things that we are talking about from a county standpoint; the jail, large expenditures, bonding... it settled the idea down, but again, I don't want to speak for the Council and certainly not Mrs. Powless as well but it was a very good exercise to go through. He said from our perspective it validated our numbers and the County was able to say well, I am not just going to take your word for it.

President Valiant said right, alright thank you Jordan. He asked any other questions from the Board right now while we are waiting on this paperwork.

Jeff Willis asked what would happen if the city didn't grow as expected. He said so 10 years from now you know, half the house are occupied and the other half people bought the lots because you know whatever and they can't build on them because they can't get financing from the banks, like after what happened this weekend.

Amanda Mosiman laughed.

Jordan Aigner said yeah, I would say that it is a proportional effect, you know, I mean as good as it can be we feel it's going to increase the county's assessed value upwards of 120 to 130 million dollars at full buildout. He said if it doesn't go as successful, it's just a proportional down from what that is. He said one thing I want to make sure that we do point out is, you know, we were

looking at especially our financial numbers that financial report was really looking at hey, it looks like we are losing some money here but if you get the growth like we are talking about then you would actually have more money right, but what is not contemplated in that all, it really was more of a financial analysis in a vacuum, was and you guys know this, your board and the boards, there is a cost to having this as well and that was not in there. He said that was not saying that okay well if it's not incorporated the cost of maintaining miles and miles and miles of road are now on that very same budget that were worried about, right. He said that was not contemplated in our financial analysis and I think it should be noted that if it is not incorporated and there is some type of growth, okay, of course were saying we can be much more successful with the incorporation for all the reasons we mentioned last time but if it is not there is going to be all that cost that you get, you know along with it. He said so with the incorporation the county wouldn't have those costs. He said so that was just kind of not really discussed.

Jeff Willis said I guess my concern is, you know, at what point does the city say okay we are not going to make it we have to unincorporated. He asked is that an option, what happens if that were the case.

Jordan Aigner said I can't...

Jeff Willis asked does it come back to the County, does it...

Jordan Aigner said yeah I mean I think you could look at some "burghs" in our county that have maybe went by the wayside just from lack of growth and look at what their track has been. He said you know, you look at Millersburgh that used to be around and it got all coal mined, strip mined so that was just everything got bought up.

Jeff Willis said right.

Jordan Aigner said cease to be in existence. He said you look at Yankeetown, it was never incorporated, I would argue had it been incorporated probably would have continued some growth but that is a picture of what happens when you don't think a little bit down the road.

Amanda Mosiman said so I spent a little time kind of on that same train of thought myself as we looked at it and really payed attention to this Section 8 like based on our decision of the Board this is our criteria for making this decision and that first bullet point is the expected growth and governmental needs of the area surrounding. She said that was a concern because you know you are very limited in growth capabilities, which has its good and bad but there are just so few examples in Indiana, like we had said last time, there hadn't been a new town in nearly 30 some odd years. She added I wasn't really able to find, there had been some towns that had been incorporated back in to the county, very small ones across the State or they were very you know kind of like, the mine or the other city just got encroached on too much. She said there were very specific instances but I don't know if it is kind of the chicken and the egg argument, you know, is it the best interest of this current territory one could argue probably but I worry about that expected growth and the growth around you is going to limit your growth potentially but you know that's... there are so many variables that play into that but you know I kind of spent some time too going...

Jordan Aigner said yeah, I hear your thoughts. He said so just bear with me, this is going to get a little and I don't mean to soap box but a little dreamy.

Amanda Mosiman said right.

Jordan Aigner said so sometimes we get kind of scared about stuff that we have never done, right or... and we think about what if, what if, well you know, if we never do anything then nothing will happen, you know. He said and yes, it is a different idea, a big idea, new idea, but those things are things we can get excited about, you know. He added we have big... you guys get a lot of big decisions, right, and there big decisions for each person behind me for whatever is going on for them it is a big deal for them. He said same thing for us, this one is just something that we are trying to look further down the road. He said we hope that this is something that the County can get really excited about. He said you know, it's okay and it is cool to have solar farms and things like that but you know how many people get excited about it, I don't know. He said but this thing, I really think this is something we can get excited about and the other thing I wanted to say was, you know, part of the argument is well you are just going to develop it anyway. He said that is not the case, it will not look the same and we have put a lot of money into it right now and it is going to take probably 20 to 40 million dollars to come to full build out. He said am I going to spend that if it is not in this incorporated manor, no because that is not the vision, okay. He said and so we say that you know, you would have to say first okay I believe you Jordan or I can go 90% of the way there that you are going to be more successful in this manner, okay, but if we say no and then we look at our County budgets and say well we have to pay for these County budgets and we have to pay for those jails, and we do need a jail, right the only way you pay for them is with growth and so it is hard... to me it is counterintuitive to say no to this because we have just never done it before, right, and I get that but then oh my gosh, I really hope we get some growth you know so we can pay for all these great things we want to do. He said it is a little bit chicken before the egg but...

Amanda Mosiman asked why did the vision change though. She said from the original plans that this is a subdivision to now it is an incorporated town, I understand you have some more lee-way with development as an incorporated town to be able to get this to build out but can you explain it again. She asked what changed, why did the vision have to change.

Jordan Aigner said good question. He said there was no change so I never sold a lot out there without this being on the deed so that four thought came way before.

Amanda Mosiman said okay.

Jordan Aigner said the reason I came to you know is because I had to convince my family that I am not nuts and that we could really do this and it could really work. He said so you know why people don't do this, it costs money guys. He said there is nobody backing that up, if you vote no tonight and then it goes to the Commissioner's and they vote no I have wasted a lot of money. He said so people don't want to do that and take that chance that they might lose a lot of monies in legal fees and surveying fees and you know, the whole effort. He said that is probably the number one of why it is not done. He said people want to say well he has to be making money somehow, I am not, this effort is costing money but I think it is the best way to preserve a vision

for people that I don't even know yet who are going to live in that community, that town 10, 15, 20, 30 years from now. He said no different than what somebody did in Boonville years ago, Lynnville, or Elberfeld. He said this is just we happen to be at the juncture where somebody wants to start a new one and here we are.

Attorney Doll asked everybody has the document now.

Amanda Mosiman said yeah, I mean a lot of schedules and sections but not a whole lot of pros to the report.

Jordan Aigner said it is just a bunch of numbers.

Amanda Mosiman said yeah.

Jordan Aigner said it was very important for us that I could put at someone else's study to say that they agree with our numbers and especially to work with the County Council when they are working with bond expenditures and they needed to feel comfortable and this allows them some more ability to take and push that forward for projections on everything they are going to do.

President Valiant asked any other questions from the Board. He asked Morrie did you have anything you wanted to add or...

Attorney Doll said no, I just think that when the vote comes to recommend or not this matter to the Commissioner's, they will be making the final decision. He said it would be helpful if you will look at the print out that Jordan has provided, it is dated February 13<sup>th</sup>, the colored printout, there is a reference to the APC role and then it starts with the review of Section 8 of the state statute that governs what the APC is supposed to do here and in subparagraphs 1, 2, and 3 and is there a 4...

Amanda Mosiman said 1, 2, 3, 4, 5, and 6 actually.

Attorney Doll continued 5 and 6 are your guidelines for your decisions and it would seem that we should incorporate, to make a better record, we should incorporate those guidelines into the motion. He continued so that, and I would recommend further that we take a roll call vote rather than a yay or nay vote, so we know clearly what we have, alright.

Amanda Mosiman said you want us to say yay or nay on each section or kind of make a motion based on section approvals.

Attorney Doll said Amanda let's say that you are going to make a motion to the Commissioner's with a positive recommendation then it would seem to me is what you are saying is number one applicable, "That the proposed town is used or will in the reasonable, foreseeable future be used generally for..." then which one commercial or residential or similar purposes.

Amanda Mosiman said mhm.

Attorney Doll continued reading, "That the proposed town is reasonably compact and contiguous". He said if, on the other hand, you are opposed to recommending positively.

Amanda Mosiman said I get what you're saying.

Attorney Doll added then you ought to tell us why, which one of these you feel isn't met by the application. He said and that way Jordan knows what it is that we have decided and he has certain, legal rights and that would preserve what those rights are, okay.

Amanda Mosiman said we will channel our inner BZA Findings of Facts sort of thing.

Attorney Doll said sort of and I would recommend to the Board that there would be a roll call.

Amanda Mosiman said okay, alright.

Mrs. Barnhill asked Jordan did the Commissioner's give you any kind of date that they might want to hold their meeting on this.

Jordan Aigner said yeah, so we have noticed already... March 27<sup>th</sup> is their public hearing.

Mrs. Barnhill said okay.

Jordan Aigner said and that was kind of driven mainly because there was the continuance of this Board and then we have to fit in what the State Statute says so here is what we do.

Attorney Doll said right, you have a window.

Jordan Aigner said correct, yeah.

Mrs. Barnhill asked so that is at their regular 4'o'clock meeting.

Jordan Aigner said yes.

Mrs. Barnhill said yes, okay.

President Valiant asked any other questions from the Board.

Jeff Willis said well it says can be used generally for commercial, residential, industrial or other similar purposes. He said so would he be able to... and I don't know if like...

Attorney Doll rhetorically asked if you approved it for residential could he use it for commercial at a later date is that.

Jeff Willis said or like a landfill or a big... is that something that has to be in the county or is that something...

Amanda Mosiman said well that depends on how he drafts his plan for the town, so yes those types of uses would be available if that is the way he drafts his ordinances, yes. She added I don't think that is his intent, obviously.

Jordan Aigner said no.

Richard Reid said I hope not.

Amanda Mosiman said but once this releases to town it would be like any other town it would be like any other town, they are allowed to do what they can with their ordinances in their limits.

Jordan Aigner said and I want to make that point abundantly clear, I do not live there, I do not plan to live there, I cannot be the "mayor", and there is no mayor. He said I can't be on the Town Council. He said whoever lives there understands the vision, has already seen it on their deed, and hopefully people are going to run for potential positions this fall. He added at that point, there are a minimum of three people in there that are going to be on a board just like yours, right, and it is not going to be what I say goes. He said it is going to be hey, we bought into this vision let's do it. He said I am going to have to be a developer to them just like every other town board. He said I won't have any other influence upon them, you know, they are going to have the way they want to live and the way they want to see their town grow.

Amanda Mosiman said it is not hard enough to build a house, here is a job in local government.

The Board laughed.

President Valiant asked any other questions, if not I will entertain a motion.

Doris Horn said he has a question.

President Valiant said who has a question, oh back there (referring to the audience).

Someone from the audience said well I didn't see a sign in sheet but can I come up and ask a question.

President Valiant asked is the record closed on this or no.

Mrs. Barnhill said no.

Attorney Doll said I don't think we closed it.

Mrs. Barnhill said it was not closed.

President Valiant said okay, well I guess we will ask for remonstrations for or against this and Mr. Overton if you would please come up and sign in.

Brad Overton, 185 Dusty Road property owner, was present.



Brad Overton asked is that seat still open or...

The Board laughed.

Brad Overton said well, I just had a couple questions to get addressed for me and I know you guys will be the ones offering the recommendation and not the final say on this project but just for my clarification, I assume if this is final approval that your ability to regulate as far as building and subdivisions and sidewalks and those types of things that this Board is a part of will no longer fall under your umbrella. He asked is that correct.

President Valiant said at a certain time, yes.

Brad Overton said right, but that will be seeded over to that local entity there and they will make those decisions and so you will be basically seeding that over to them so that was one question that I wanted to get cleared up. He said and honestly I don't know if this is the place to get into concerns about the PSLIT and LIT money and those types of things now but just as, and I am not speaking on behalf of the Council, I am speaking just for myself so I don't know if I really want to get into all those with you all but that was my primary concern.

Attorney Doll said yeah, we don't really have any control over that.

Brad Overton said yeah, I know you don't, I know you don't, but that is kind of where my other concerns would be for it but I really just wanted to address that one about your ability as far as zoning and those other types of regulations.

President Valiant said thank you Brad.

Richard Reid said thanks Brad.

President Valiant asked anyone else, seeing none... and Brad, were you okay with that answer or would you like Jordan to expand.

Brad Overton said I am good.

Jordan Aigner said let me expand... well, maybe for those who weren't here as well, just real shortly, because we explained that last time during the presentation. He said the State says hey you can't have a gap in jurisdiction so you are out there running, guns a blazing, you know, this Board will act as our development and building body until such time the Town Council either decides to or not to remove there selves from that jurisdiction. He added it is anticipated as much but again it is a new board created and so it will be with this Board and the normal development guidelines of the County until such a time there is a change, so we talked about that last time.

President Valiant asked any further questions from the Board. He called for a motion, no one spoke and he asked Morrie, in this motion either way do you want these all listed out separately.

Attorney Doll responded I would, yes please.

President Valiant asked Section 8 Number 1, Section 8 Number 2...

Attorney Doll said yeah.

President Valiant said okay.

Attorney Doll said you can't be too specific.

Richard Reid asked can you go ahead and give a guideline for that so...

Attorney Doll said well the motion doesn't have to give the guidelines, per say, but that you believe Number 1, "That the proposed town is used or will in the reasonably foreseeable future be used generally for residential purposes", something of that nature. He said then Number 2... I think we are required to prove that we have considered each of these points, okay, in the recommendation to the Commissioner's and then the Commissioner's get the final say. He said that is why I am suggesting or recommending that you make your motion and specifically refer to this, these points. He added you can make whatever motion you wish to make.

Richard Reid said right.

Attorney Doll said you can choose to disregard my recommendation.

Richard Reid said no, I think that sounds...

Amanda Mosiman interjected alright, I'll jump.

Amanda Mosiman made a motion for a favorable recommendation for the Town of Victoria Woods based on the requirements of incorporation in Section 8, as follows:

1. That the proposed town is or will be used for residential purposes.
2. That the proposed town is reasonably compact and contiguous.
3. That it does include enough territory for reasonable growth.
4. That they have shown that they have a substantial number of property owner's that have agreed to this.
5. Based on the municipal services that they can provide and it would have a reasonable tax rate.
6. It is in the best interest of the territory involved.

Richard Reid seconded the motion.

Mrs. Barnhill proceeded with a roll call.

Doris Horn gave a favorable recommendation due to the following:

1. That the proposed town is or will be used for residential purposes.
2. That the proposed town is reasonably compact and contiguous.
3. That the proposed town includes enough territory throughout for reasonable growth.

4. That the property owners have agreed to at least 6 of the following...
5. That the proposed town could finance the proposed municipal services with a reasonable tax rate.
6. It is in the best interest of the territory would be the expected growth and governmental needs of the surrounding area.

Jeff Willis gave an unfavorable recommendation due to the following:

1. The property not being large enough for growth.
2. Not confident that the tax rate will justify the finances.

President Valiant gave a favorable recommendation due to the following:

1. That the proposed town is or will be used for residential purposes.
2. That the proposed town is reasonably compact and contiguous.
3. That the proposed town includes enough territory throughout for reasonable growth.
4. That the property owners have agreed to at least 6 of the following...
5. That the proposed town could finance the proposed municipal services with a reasonable tax rate.
6. It is in the best interest of the territory would be the expected growth and governmental needs of the surrounding area.

Greg Webb gave a favorable recommendation due to the following:

1. That the proposed town is or will be used for residential purposes.
2. That the proposed town is reasonably compact and contiguous.
3. That the proposed town includes enough territory throughout for reasonable growth.
4. That the property owners have agreed to at least 6 of the following...
5. That the proposed town could finance the proposed municipal services with a reasonable tax rate.
6. It is in the best interest of the territory would be the expected growth and governmental needs of the surrounding area.

Bob Johnson was absent.

Attorney Doll said wait, you...

Amanda Mosiman said I made the motion so yes, I am in favor.

Richard Reid said I haven't voted yet and I am in favor too.

Attorney Doll said thank you.

The motion passed 5-1 for a favorable recommendation for the Town of Victoria Woods.

Attorney Doll said so it will be sent to the Commissioner's with a favorable recommendation.

Jordan Aigner said okay, thank you guys. He said I know it is a big decision and I appreciate you guys taking time on it. He said thank you for your work on it.

Richard Reid said well, good luck.

Attorney Doll said first time in 30 years.

Amanda Mosiman said it is like 34 or 36 something like that.

Jordan Aigner said yeah... if it happens, we have another Board to go to but thank you for your favorable recommendation.

President Valiant said good luck with it Jordan.

Jordan Aigner said thank you again.

**PP-23-02: Deer Creek II:** PETITIONER/OWNER: John R. & Linda K. Stoltz. Approximately 7.94 acres located on the south side of Ayrshire Road. Approximately 0 feet southeast from the intersection formed by Ayrshire Road and Stephenson Station Road. Being Lots 1,2, & 3 in Deer Creek Subdivision, Recorded in Document # 2022R-007622. Campbell Township 29-5-9. *(Advertised in the Standard March 2, 2023).*

Bret Semershein, Morley, Engineer, was present.

President Valiant called for a staff report.

Mrs. Barnhill said for the notices, we have most of the green cards but we are missing 2 and they were mailed correctly. She said the property is zoned "A" Agricultural Zoning District and there is no floodplain. She said they are proposing 3 residential lots and actually there are 3 lots now and they are just reconfiguring them but as part of this they had to amend street plans, basically just the shared driveways in the road right-of-way and so that is why it is back here tonight as a primary. She continued the Commissioner's approved those street plans today with the dollar amount and the Drainage Board approved the request for no drainage plans. She continued the Health Department has signed off on the proposed septic sites and Chandler Water has capacity so the plat would be in order.

Attorney Doll asked are the owner's present.

Bret Semershein said yes, they are.

John R & Linda K Stoltz, Owners, were present.

Attorney Doll said thank you.

President Valiant asked do you have anything to add to the staff report.

Bret Semershein said so as you can see, the original 3 lots had several easements going through those and they were put on their based on the last configuration. He said we are going to vacate all of those easements and those easements will be heard by the Commissioner's on the 27<sup>th</sup>.

Amanda Mosiman asked so anything we approve tonight is going to be contingent on the vacation of those easements.

Mrs. Barnhill said well they could really leave the easements.

Bret Semershein said yeah, we could leave the easements.

Mrs. Barnhill continued they are just right in the middle of their lots.

Amanda Mosiman said true.

Bret Semershein added it just doesn't make it buildable.

Attorney Doll asked what type of easements.

Bret Semershein said well there are public utility, drainage...

Amanda Mosiman said Indiana Bell Telephone...

Mrs. Barnhill said drainage and underground public utilities and they had shared drive easements off the original plat in order to put the new one on the shared property line.

Bret Semershein said and the one between the old 3 and 4, were vacating that as well but we have the original developer, KSKS, were going to move their driveway to the middle of the old Lot 4 so there is no increase in driveways along Stevenson Station Road.

President Valiant asked any other questions from the Board. He asked any remonstrations for or against this project, I don't see any movement so I will bring it back to the Board.

Amanda Mosiman asked so we are trying to make buildable lots here by vacating easements or...

Bret Semershein said more buildable.

Amanda Mosiman said more buildable, okay.

Bret Semershein said yeah, so I mean they probably could build something in there but the easements are not needed because of where the lot lines... the old public and utility drainage easements would have brought all of the drainage through the lots and the way it is now we do not need those. He said we are going to have sheet drainage and we are giving a public utility easement along Ayrshire Road where we never had before so they will be able to move that through there.

Amanda Mosiman said okay, so we are vacating but we are adding new.

Bret Semershein said that is correct.

Attorney Doll said well we are shifting some property lines.

Bret Semershein said yes, correct.

Amanda Mosiman said right, okay.

President Valiant asked any other questions from the Board.

Richard Reid made motion to approve PP-23-02. Doris Horn seconded the motion and it carried unanimously.

Mrs. Barnhill said you all are set, thanks.

Bret Semershein said I actually have the next one too.

Mrs. Barnhill said oh, you do don't you.

**PP-23-03: Braxton-Colt Place:** PETITIONER/OWNER: Sean Miller & Brittany Drone. Approximately 0.91 acres located at the end of McDaniel Drive. Approximately 500 feet northeast from the intersection formed by Fuquay Road and McDaniel Drive. Being Lot 13 in Corrected Plat of Paradise View Subdivision, Recorded in Document #1997R-0011195 and being Lot 2 in Trey Minor Subdivision, Recorded in Document #2007R-000731. Ohio Township 14-6-9. (*Advertised in the Standard March 2, 2023*).

Bret Semershein, Morley, Engineer, was present.

President Valiant called for a staff report.

Mrs. Barnhill said we are missing 3 green cards but we do have the white pay receipts. She said the property is zoned "R-1" One Family Zoning District and the rear is "C-4" General Commercial Zoning District and there is no floodplain. She said the proposed development is creating one lot from the existing Lot 13 in the Corrected Plat of Paradise View Subdivision and Lot 2 in Trey Minor Subdivision. She continued the Commissioner's approved the request for no street plans today and the Drainage Board approved the request for no drainage plans today. She said Newburgh Sewer is existing and Chandler Water is existing so the plat would be in order.

President Valiant said thank you Molly. He asked anything to add to the staff report.

Bret Semershein said yeah, I think the only reason they're doing this task is they are wanting to build a barn, or a structure, on Lot 2 of Trey and so you cannot have an accessory structure on that lot itself so that is the reason we have to do the combination of the two lots.

President Valiant said alright, thank you. He asked any questions from the Board at this time.

Attorney Doll asked are there restrictive covenants different on each lot.

Bret Semershein said that I do not know.

Attorney Doll said well you are proposing to subtract Lot 2 from Trey.

Bret Semershein said correct.

Attorney Doll continued merge it with, whatever this is, Lot 13, the original Lot 13, and so it will now be part of this subdivision, Braxton-Colt Place.

Bret Semershein said that is the new name, yes.

Attorney Doll said and it will be subject to... will Braxton-Colt Place have restrictive covenants.

Bret Semershein said that would be up to the owner's, I would think that... they are the only ones in the subdivision so they could make them if they wanted.

Amanda Mosiman said well, isn't the existing house in a current subdivision, Paradise View Subdivision.

Mrs. Barnhill said yes the front one is.

Amanda Mosiman said the front one is.

Bret Semershein said yes.

Mrs. Barnhill said and it was recorded in '97 so if it had private restrictions...

Attorney Doll said and I don't know if they did or not.

Mrs. Barnhill said I mean a lot of those die off.

Richard Reid said yeah, after 20 years or so.

Attorney Doll said well sometimes they do, sometimes they don't.

Amanda Mosiman said it depends on how they're written.

Attorney Doll said yeah it depends on...

Bret Semershein said on how they are written and...

Attorney Doll said on what the language is. He said it would seem to me that unless the restrictive covenants expired by their terms or unless everybody else in Paradise consented to the withdraw I would think that the combined Lot 2 and Lot 13 would be bind to the restrictive covenants, if any, from Paradise. He asked wouldn't it, I mean I would think they would be.

Mrs. Branhill said but they do this...

Amanda Mosiman said it would have been my first question.

Mrs. Barnhill asked it would have been because we have done this a lot. She said like before...

Attorney Doll asked we take one lot out of one subdivision and merge it into a lot of an adjoining subdivision.

Mrs. Barnhill said well it is a minor and it's a land locked piece of a minor and on the land locked piece in the minor it says to go to the adjacent property to the east being Miller. She corrected west, excuse me, to the west so this lot in the back that is "C-4" that they are trying to combine was always intended to be theirs and it is landlocked.

Bret Semershein said and it was a requirement of Trey Minor for those 3 lots, because Trey Minor had 4 lots, there was 1 lot along the highway and then Lots 2, 3, and 4 they all, theoretically, combined with the lots in Paradise.

Attorney Doll asked theoretically or legally.

Amanda Mosiman said Paradise View.

Bret Semershein said they were owned so I think the plat on Trey Minor said they were supposed to be sold to these owner's. He added I actually tried to get them involved in the subdivision because if they ever want to build a structure on theirs they will be back here so I was going to try to get them to do it altogether.

Attorney Doll said fix it all at once.

Amanda Mosiman said mhm.

Mrs. Barnhill said and there is like a row of three of them.

Bret Semershein said that's correct, but I know we did one several months ago.

Attorney Doll said all I am trying to determine is what are they going to do... what is this parcel of property going to be governed by. He asked is it subject to Paradise's original restrictive covenants or not, if, if they even exist and I...

Amanda Mosiman said we have added ones in the same subdivision or moved ones in the same subdivision.

Attorney Doll said I don't recollect... yeah crossing a subdivision or development.

Amanda Mosiman said yeah, I mean we did just have one recently but we went straight to this point so...

Attorney Doll said I mean it, for the record if the property owner's affirm that they intend to be governed... that the combined parcel will be governed by the Paradise Restrictive Covenants, if any, I mean I think that gives you enough basis to decide if you are going to approve it or not. He said it is just a little unique because we are pulling one lot out of one subdivision and another lot out of another subdivision and putting them together. He added and the only question I have is



okay, if there are restrictive covenants which ones govern. He said we do not enforce restrictive covenants but I think for clarity purpose we need to know which one governs.

Mrs. Barnhill said it's becoming its own subdivision right, now it has a new name.

Attorney Doll said I don't...

Richard Reid said I don't know if it works like that.

Amanda Mosiman said if we are going to do that I won't... if it is going to be a new one I won't vote for it.

Attorney Doll said well I think everyone with existing houses in Paradise have a right to reasonably expect that their neighbors will still be governed by the same rules.

Amanda Mosiman said that they originally signed, yeah.

Attorney Doll said I could choose to leave my subdivision to create some new rules, new restrictive covenants.

Mrs. Barnhill said well I mean they plat and replat them in major subs all the time.

Attorney Doll said but they don't change their restricts.

Mrs. Barnhill asked they don't.

Attorney Doll said I have never in my 10 years here have considered that they would change the restricts. He said they move lot lines, they plat, they replat, etc. but they keep the same.

Mrs. Barnhill said they rename, give it new names... is that the same.

Attorney Doll asked is it one lot or is it the whole thing.

Mrs. Barnhill said they take a couple lots out of one major subdivision.

Attorney Doll said well... I...

Jeff Willis said we had this a couple weeks ago, or a couple months ago one something and...

Amanda Mosiman said yeah, and well it was two months ago and we made them, it was something similar to this, there was the first one and the second one and we made sure it conformed.

Bret Semershein asked so would they have to then in turn re-do the covenants and restrictions in Paradise to bring in and write a whole new description.

Richard Reid said they may not have one.

Bret Semershein yeah, but if they do... do we have to go through all that paperwork to then amend the description to bring in the back portion or does just the portion that was inside the original portion subject to it but the, where the garage is going to be, is not part of that, if those restrictions exist because I do not know.

Attorney Doll said I don't either and you have asked some good questions and a guy with a black dress gets to make those decisions at some future date if somebody wants to bring it up in court, a guy or a gal.

Mrs. Barnhill said so if these have private restrictions... do I need to be looking at these every time they do a plat or major and bring those to you guys.

Attorney Doll said it seems to me we need to know whether they have them or not but Molly the dilemma tonight that precipitated my question is that we are in two different subdivisions and we are joining two different lots and I think we are going to create an ambiguity.

Amanda Mosiman said mhm.

Attorney Doll said I am not opposed to this Board saying okay, we are going to combine them. He said I am just saying okay, tell me then what the rules of the road are. He asked how do we expect them to use them. He added and I, I think there is a very good point about the fact that if I own an existing house on Lot 12 I have a reasonable right that Lot 13 is still going to be subject to the same, if there are any, same restrictive covenants as I am otherwise, I mean, folks could just change the use. He said well there is no restrictive covenant... I don't know that these folks are interested in that by any means but I think we are creating a problem that we need to have a little bit of foresight about and it is all because we are crossing subdivision lines. He said and if you disagree, you can make a motion...

President Valiant said no I am with you Morrie, so is there remonstrations for or against... let's go that route and get that out of the way. He said I don't know, what are the wishes of the Board. He asked are the owners here.

Bret Semershein said yes.

Sean Miller & Brittany Drone, Owners, were present.

Richard Reid asked can we make this...

Jeff Willis interjected well what if you have one subdivision that says you have to build your barn with all red brick and the other one says you have to build it matching your house so it's organized. He said I mean I know this really isn't our issue but we don't want them to run into any of these problems.

Doris Horn said I agree with that.

Amanda Mosiman said I am okay with approving it if they agree to conform with the original restrictive covenants of Paradise.

President Valiant added if it is still there.

Amanda Mosiman said if it's there, if they don't exist so be it they don't exist, but I mean to get them through tonight I am okay with them saying it has to conform to the Paradise View if they exist.

President Valiant asked I mean they are the only people living back there right.

Richard Reid asked is that your motion.

Attorney Doll said woah, now wait a minute.

Amanda Mosiman said no, I said that is what would get my vote. She said I did not make a motion.

Richard Reid said oh, okay.

Amanda Moisman continued during discussion I am saying I am comfortable with that.

Attorney Doll asked do you want to talk to your clients, maybe we are making a mountain out of a mole hill.

Bret Semershein said I mean they have been there 23 years I am sure they would... they want to do the right thing.

Attorney Doll said so they are agreeable to consider the additional territory, in the back, being merged with their building lot where there home is that will be all be covered or governed by the restrictive covenants of Paradise.

Amanda Mosiman and President Valiant added if they exist.

Attorney Doll said if they exist and that is part of the record of this application.

Bret Semershein said okay.

Attorney Doll asked right.

Bret Semershein said thanks.

President Valiant said with all that said... any other discussion, if not I will entertain a motion.

Amanda Mosiman made a motion to approve PP-23-03 with the stipulation that if there are restrictive covenants for Paradise View Subdivision that this new lot conform to those. Richard Reid seconded the motion and carried unanimously.

Doris Horn said that makes sense.

President Valiant said thank you folks. He said alright where are we at.

**PC-R-23-04:** PETITIONER: Special Waste Services, Inc by Joe Beard, Owner. OWNER: J Rose Properties, LLC by Joe Beard, Owner. To rezone 3.15 acres located on the west side of Prospect Drive approximately 600 feet north of the intersection formed by Vann Road and Prospect Drive from “M-2” General Industrial Zoning District to “M-3” Solid Waste Disposal Zoning District. Being Lots 7 & 8 in Warrick Research & Industrial Center No. 3, Recorded in Document #1996R-003758. Ohio 19-6-8. (*Advertised in the Standard March 2, 2023*). *Being Continued to the April 10, 2023 APC Meeting.*

President Valiant said well this is going to the April meeting, let me go ahead and get ahead of myself.

Attorney Doll said well it did need to be read.

Amanda Mosiman said okay.

Mrs. Barnhill said so it was advertised so it had to go on the agenda.

President Valiant said right.

Mrs. Barnhill said but their notices were not mailed correctly so they have re-noticed for the April 10<sup>th</sup> meeting.

Amanda Mosiman asked so since it was advertised do we still need to make an official motion to continue it.

Attorney Doll said yes.

Amanda Mosiman said okay.

Amanda Mosiman made a motion to continue PC-R-23-04 to the April 10, 2023 APC Meeting. Richard Reid seconded the motion and it carried unanimously.

**OTHER BUSINESS:**

**Determination on Office/Pool House:** 6399 Oak Grove Road; Adam & Amie Hubbard, Owners.

President Valiant asked Molly, do you want this one.

Mrs. Barnhill said yeah, so this is a determination on an accessory structure. She said I brought this to the Board in January.

Amanda Mosiman said oh, I remember, okay.

Mrs. Barnhill said yeah because they wanted me to issue the permit like it is an accessory building however I looked at it and I was not comfortable so in the January meeting it was determined that this looked like a single family dwelling and so I did not issue the permit. She said we have Attorney Dirk Stahl here tonight and the owner of the property who want to discuss this further and maybe come up with a solution.

Dirk Stahl, Zeimer, Stayman, Weitzel Attorney, and Adam Hubbard, Owner, were present.

Attorney Stahl said good evening everyone, this is the property at 6399 Oak Grove Road and, please bear with me, I was not a part of the conversation in January but I have been looking at this and speaking with my client, Adam Hubbard, who is here and this is... the existing home here is going to be renovated, that is part of the project. He added they are adding some space to it that will increase the footprint by I think 1,000 square feet and some of it is going to be just one level and some finishing out the basement but anyway it is going to be larger than what is

depicted here. He said I know that from talking with Molly that one of the initial issues was the way site plan looks it appears relative to... well in relative terms the proposed structure is quite large and as you can see there it shows the overall footprint. He added this is in a little rectangle off to the left that says proposed buildings. He said the proposed footprint is 1,864 square feet and the existing home, as it is right now, without adding anything to it is listed on the Assessor's property record card at 7,082 square feet so obviously that doesn't really track if you are just looking at it in two dimensions. He said the 7,082 square feet are of course spread among various floors so there are decks and patios, there is a first floor, a basement, and a second floor on the existing home so it is difficult to be looking at a site plan which is almost like looking at an aerial to understand or appreciate the bulk of the structure. He added so it has quite a bit of mass in comparison to the proposed structure which is more like kind of a one and a half to two-story proposed structure. He said so, the idea behind this is based on several things, it was designed the way it was designed and I think you have some floor plans there as well to be, what they would consider to be a guest house. He said the idea is that, well the reality is that Adam and his wife have 6 kids and one on the way and there oldest is 19 years old so quite an age spectrum there, but with that many people even in a great big house that they are adding onto you quickly run out of room for anybody that wants to visit over the holidays or anything that you want to do sort of from an extra curricular, so to speak, standpoint and one of things that they do with their basement in their house where they live right now is hosting youth groups, their youth groups. He said so that was part of the idea, they have some extra vehicles so there is garage space in the guest house and rather than building a guest cottage with no garage and then building a garage off to the side I think that it made sense to combine this. He said there is no intent, however, for this to be a single family house in a sense that it would be occupied permanently by anyone or rented out to anyone. He said the only sense in which it would be potentially occupied permanently would be if in the future they were to have help, basically, whether it is a caretaker for children or disabled parents or what have you but understanding that there are some quirks within the zoning code and we are trying to get around them and get a very clear picture as to what would be there and what can and cannot be there. He said so I think what the original assumption was that the answer was to subdivide this lot and there are a few problems with that and I have spoken with Don Greis who did the site plan and he agrees, he said there is just no practical way to do that because of the topography. He continued so when you look at the site plan you can see the lake that kind of surrounds and goes down the east side and across the south of the existing lake, that is one of the stripper pits, former stripper pits, up there. He said the majority of this lot or quite a bit of it on the east side of the lot is a very steep slope down to that and in fact the Hubbards had considered building a garage on the east side, where you see the concrete drive there, but the hill made it from an engineering standpoint and a cost standpoint unattainable. He said I mean it would have been just a nightmare to do the retaining walls and everything you would need to do something like that so rather than do that they are proposing to do what you see there which is on a more flat area, the western half of the lot. He said so as I mentioned there are two problems with subdividing; one is that it would be difficult to figure out where to draw the line between the two potential parcels and the second is that if you subdivide and you have two different basically single family dwellings side by side on lots side by side you are going to need all new utilities run down from Oak Grove Road and that adds a tremendous amount of cost such that subdividing it, just subdividing it and getting the utilities in place to have separate metering would cost somewhere around \$30,000 which is obviously not something that most people would want to factor into their math. He added so instead, what I have thought

about and talked about with Adam and I have had this discussion downstairs with Molly and Jeff for a while is to do this as a single lot PUD. He said so with a PUD, as you know, it is technically both a rezoning and a plat. He said you would have notes on the plat as far as the uses that are permitted and the rules. He said you can do private covenants with a plat but you can also because of Section 10-15 of the statute, and as a condition of the rezoning and, or a condition of the subdivision plat approval require a Use and Development Commitment to be... a written Use and Development Commitment to be recorded and to run with the title to the land. He said that is what we would be looking at in terms of basically locking down the uses of property and locking out anything that you don't want to be there. He said the owner's do not want a neighbor right next to them like that, they don't want to sell it, they don't want to move anybody in. He said as I said, if anybody were to move in, if they have elderly parents in the future that need some extra care that could live there that would be frankly I think a change of use but it is not what is contemplated now. He said what is contemplated now is to have a house, basically, I mean we talk about it as a single family dwelling, a space for visitors. He said this is all temporary, it is not rental, it is not... we are not creating multi-family housing here, as I said, that is not what is desired. He added so if you do a Use and Development Commitment you can lock it down in terms of the manner in which the property is used, with the PUD you can do appropriate development standards that would obviously have to be approved by this Commission as well as the County Commissioner's as part of the rezoning. He stated the challenge that we have run into is this, what do you call that "thing", and I say it's a challenge mainly because there are a number of definitions in your zoning code; one of them is for a guest house, the definition of a guest house in your zoning code stands alone in the sense that the term is defined but the term is never used. He added so we have a definition, he read, "A building separate and an addition to a main residential building on a lot intended for intermittent or transit occupancy", so far so good, "such quarters having no kitchen facilities and not rented or otherwise used as a separate dwelling unit". He said so the first... the main issue there is obviously the kitchen facilities and the floor plans that you have do include, I think it is called a kitchenette, but for all intents and purposes we will call it a kitchen... its cooking facilities. He said that is not, again that is not in order to facilitate moving a family in there permanently, it is to facilitate preparation of food for the kinds of things that they are talking about using this for, which is: hosting youth groups events, but also for the convenience of the people who would be guests there on an itinerant and temporary basis. He continued the kitchen can go, if need be, but we are trying to find a way to get this done in the way that it was contemplated originally. He said so if we do a PUD, you would have the restrictions that can be on the plat, you could have the restrictions in a UDC and the UDC would be enforceable not only by the Plan Commission, by the County, and as you know, the statute says you need to determine who is going to have standing to enforce it. He said I know some of them we have done before have been, you know, anyone with property within a 1-mile radius and I don't what your convention is here but you know, that is an example. He said so neighbors, people in the area, if there is a problem with the use of the property, and I have to say it would only be after these owner's don't own it anymore and I know that is what we plan for with you all being the Planning Commission, but that is what we are trying to do is lock it down for the future. He said so the next piece of the puzzle, so to speak, as I said is determining what that "thing" is and if it has a kitchen it isn't a guest house. He said there is one other well one and a half other type of things that would be included or come close in your code, the first of which being employee or servant quarters. He said so you have a definition for employee and then in parentheses servant quarters closed parentheses and the definition of that reads, "An

accessory building located on the same premises with the main building used solely for persons employed on the premises and not rented or otherwise as a separate dwelling unit”. He said well if you take the used solely for persons employed, it would be an accessory building located on the same premises with the main building and not rented or otherwise used as a separate dwelling unit. He added so you come close but not quite, kind of like the guest house with the kitchen. He said the third, I guess there is a definition for an accessory dwelling unit and that goes along with your Special Use 16, but again the definition of an accessory dwelling unit, and I assume that means the one that is referred to in SU-16 has the same or I am sorry... accessory living quarters, he read, “Living quarters within an accessory building for the sole use of persons employed on the premises, such quarters rented or otherwise used as a separate dwelling”. He said again, that is a permanent use that contemplates something other itinerate, you know, just guests coming and going, coming for the weekend, coming for the holiday, and so forth. He said that to me is a far more intense use than a simple guest house that happens to have a kitchen and it is certainly more of an intense use than a guest house that doesn’t have a kitchen. He added it is also zoned Ag and there is a permitted use, “Accessory farm buildings, including separate tenant housing for farm employees”, that is under your Ag Zoning District. He said okay, obviously some of these things were written in the past when you had, you know, that was more common, when you would have farm employees but again that is tenant housing for farm employees and it is permitted in the Ag District. He added this again, I think is a far less intensive use than those uses and that brings me down, if you go down the list, to the ever ambiguous “other use”. He said what I would say is if you want to know what it is called, call it what you want. He said you can call it a guest house but with a kitchen, you can call it accessory living quarters but not for employees or not necessarily for employees, you can call it temporary itinerate living, you know, sleeping quarters or something. He added but the whole point of having a category for other uses is one that you have other because you can’t put a name to it. He continued so rather than, my position would be, our position would be, struggling to search for a use that has already been defined, you take advantage of the “other uses” designation and make one and the requirement is that it be uses similar to the above, which in the judgement of the Commission are, “similar to and not more objectionable to the general welfare than the uses listed”. He continued, “Other uses so determined shall be regarded as listed uses”, so again what I think the Commission is empowered to do by that ordinance is to describe a use for what it is rather than being constrained to uses that appear elsewhere in a list. He said but be that as it may, all we are talking about here is temporary guest quarters and I think that I have explained that the size is relative... I understand the way that it looks, it looks big and it looks like another single family home but a single family home is only a single family home if you use it for one and we are not talking about using it for one, in fact, we are talking about in writing, recorded in the Recorder’s Office, prohibiting using it as a single family dwelling in perpetuity or until the County Commissioner’s and the Plan Commission decide to rezone it again. He said so, I have come in here with a lot of information and a lot of thoughts and ideas and I wanted to, when I talked to Molly earlier I just kind of wanted to get on the agenda so that we could talk through this. He said we don’t have a formal presentation to make, I am just trying to work through the processes that would be necessary and some of the options that the Plan Commission would have to be able to permit the issuance of an ILP for this accessory structure and we would be happy to answer any questions that you have.

President Valiant said thank you sir. He said you know I appreciate that they are wanting to do the right thing and I want to see them get it done, I just don't know how we can make it work for them.

Attorney Doll said well, we have never ever approved two dwellings on a single parcel.

President Valiant said I know.

Attorney Doll said we have never approved an accessory building that has its own kitchen.

President Valiant said right.

Mrs. Barnhill said correct.

Jeff Willis asked how many have we approved that put a kitchen in after or a stove.

Attorney Doll said we don't know.

President Valiant said right.

Richard Reid said and you don't know if it is going to be permanent or not, once they move in you don't know how long they are going to be there either and we can't come on your property to look either and it is always tricky on that too.

Attorney Doll said yeah, we don't have a definition of temporary. He added I don't know what that means.

Attorney Stahl replied it would be in the definition of guest house.

Attorney Doll said okay, is it less than 30 days, is it 30 days, Dirk. He said is it... is it... in order to have any relevance it has to be defined.

Attorney Stahl said sure, well how would you like it defined.

Attorney Doll said it is not up to me, it is up to the Board.

Attorney Stahl said well no, I mean I am putting that out meaning you plural.

Jeff Willis said you aren't the first person who has asked for something like this so its, you know, and I have always wondered how can we make it where it makes sense where people wont abuse it which is always the trick.

Attorney Stahl said right.

Jeff Willis said so if we approve for you guys and they say well you did it for them and then they are renting it every other weekend or whatever.



Attorney Stahl said sure, and I think you know part of the idea here is that if you do it, as Mr. Valiant said, the right way and go through the process of doing a Planned Unit Development with as much thought that we are willing to put into this, I think that that would not be a very attractive option to too many people to say that well he did it over here, lets do it over here.

Jeff Willis said well and it's not as much, you know, you guys do it right and then 20 years from now you sell it and you know, the short term housing is kind of big right now so somebody comes in, they buy it, do that, they don't look at the covenants, they don't look at the restrictions and then it is something the County has to fight it either at that point, or they come in and get a permit and they're like well you know what it has already been used like that for the past 20 years let's go ahead and approve it. He added so then you're going to have the...

President Valiant said so you are going to have that anyway you go.

Jeff Willis said you do.

Attorney Stahl said right, and that's the thing and I am coming to with the background being I am the attorney for the Vanderburgh Planning Commission and so I see this all the time too.

Jeff Willis said right.

Attorney Stahl said and you know, we look with skepticism at projects and say how could this go wrong,

Amanda Mosiman said mhm.

Attorney Stahl said and so what I am trying to do... when I say lock it down, that is what I am trying to do is to make it as easy as possible from a regulatory standpoint and as difficult as possible from a user standpoint to be able to do anything other than what we are proposing here. He added and I do appreciate, you know, there are plenty of times when we have people out in the county and they want an accessory structure larger than their main structure and we always say you're not going to use this for commercial right and they say yes and the next thing you know they have an auction barn or something like that or they put in living quarters, quite frankly I mean that is the pretty common thing to do but that is not... you know, no one is trying to pull a fast one here. He added I mean this is not subterfuge so if you want... if you have a way to define the use, or describe the use, or restrict the use in a way that makes sense to you that you would approve, we are all ears. He said you know Morrie mentioned what is temporary. He asked does that mean 30 days, does it mean whatever. He said okay, I mean I am saying okay I am sure... I think the owner's would say okay as well.

Amanda Mosiman said so when changing those definitions, Molly remind me, you know depending on what definition we want to use and yes it doesn't quite fit each one but does it change where they can put it and how far it has to be from something and dah ta dah ta dah.

Mrs. Barnhill asked if we are going to change the definition of something.

Amanda Mosiman said well...

Attorney Doll said well you are going to put limitations and a conditional approval of a PUD.

Amanda Mosiman said right, I mean if we permit it as an accessory building or permit it as a guest house or whatever we decide to do, I am just worried about the location from the property line and from the other. She said does it change is what I am asking.

Mrs. Barnhill said well if we consider it an accessory of any kind, even if we say the guest house is accessory, accessory is 3' from the line.

Amanda Mosiman said 3', okay. She added so that doesn't really change.

Attorney Stahl said that can also be set forth in the PUD.

Amanda Mosiman said I just hear single lot PUD and the other half of my brain goes "spot zone".

Attorney Stahl oh, well PUD's by definition are not spot zoning.

Amanda Mosiman said I know, I know. She said that is the joke right so...

Attorney Stahl said sure, yeah. He said no, I know but ideally you use a PUD to basically set up your own set of reasonable development standards that are approved, that have to be approved by the Plan Commission, or go through the recommendation process and ultimately be approved by the County Commissioner's and so it is almost like writing your own ordinance in a way but you are not just writing your own ordinance and then doing it, you know, it is going through notice of hearing, its going through the legislative body approval.

Attorney Doll asked does this have a metes and bounds.

Mrs. Barnhill answered yeah, it is a lot in a minor so it does have a metes and bounds.

Attorney Doll asked so it is a one lot minor sub now.

Mrs. Banrhill said there is more than one lot I believe, I have it with me.

Attorney Stahl asked where are you looking.

Attorney Doll said the subdivision.

Mrs. Barnhill said the plat.

Attorney Stahl asked oh, is it Rowan's MS.

Mrs. Barnhill said yes, it is two lots. She said Morrie, that corner one in the northwest.

Attorney Stahl said oh, that is where the house that looks like it's on... you can't see it on here but there house essentially sits directly behind that.

Amanda Mosiman said mhm.

Attorney Stahl said but there is woods in between, right.

Mrs. Banrhill said so if you consider this a home, a second home would Multi-Family Planned Unit Development... would that qualify and then if you do that you have to do a development plan to go with it.

Attorney Doll said which is what he is talking about.

Amanda Mosiman said mhm.

Mrs. Barnhill said so I think that is probably where it would fall because we have said PUD but with what, you know it has to have residential or C-4 or something.

Amanda Mosiman said mhm.

Attorney Stahl said well what I was suggesting is that you keep it with Ag and and consider it an "other use" and describe it in a way that meets the definition or requirements of other use which is no more objectionable than the existing listed uses and not harmful or "objectionable to the general welfare", is what it says. He continued so I mean we don't want multi-family housing, we don't want to house anyone there. He said it is... the whole idea is the temporary or itinerate nature of it which the zoning code does recognize in the form of a guest house even though it doesn't ever say in any of the districts that you can put a guest house anywhere. He said you know it goes through the trouble of defining guest house but then doesn't let you put it anywhere.

Amanda Mosiman said which is kind of funny.

Attorney Stahl said yeah, which is sort of frustrating but again, I think this is obviously you all defer to your council, but in my mind that is exactly the kind of thing you use for this "catch all", this "other use" and that other use thing exists in one form or another in all of your zoning districts. He added so it give you the flexibility when you come across something that isn't really defined, doesn't fit in an existing definition, you can make the decision that whatever this is, however you want to describe it is not more objectionable than and is consistent with these other uses.

Attorney Doll said and Dirk, what you are asking the Board to do is to give you some sort of direction.

Attorney Stahl said yes, I mean I understand you don't have a petition in front of you.

Attorney Doll said no.

Attorney Stahl said you don't have a plat in front of you, you don't have a rezoning but what we are trying to do is to do something that is workable that is not going to create more problems than it solves, especially from a financial standpoint. He said obviously a \$30,000 price tag on simply what you are essentially doing is drawing a line between two houses that end up being the same thing and now, if you subdivide it, you could have a house there. He said but you know I would questions then if they would maybe have to move it.

Amanda Mosiman said mhm.

Attorney Stahl said you know, to your point about whether that is going to affect... because as soon as you start drawing lines you automatically create additional setbacks.

Amanda Mosiman said you know, for me I can respect the fact that it is supposed to be of temporary nature and respect the fact that it's you know what it is supposed to be used for now, it is just that it is so large and can be, even though it is not intended, it can be used in so many more manors than what is being mentioned, I mean just because of its size and its multi-use function. She said I just...

Attorney Stahl said I think that one thing... one thing that I think that comes into play in this is that if they were to sell this property to somebody else...

Amanda Mosiman interjected anybody buying it is going to look at that and say I have a whole other house.

Attorney Stahl said anybody who buys it is going to have to get title insurance and the title insurance company is not going to ensure over that use. He said they will say you have restrictions here, you have a Use and Development Commitment here, you have anything in your plat, and you Mr. Buyer or Mrs. Buyer do not get to use it this way and if I am the bank I am going to say that is a guest house and if you put somebody in there and try to make money on it or if you use it in any way that is not consistent with that, you are in violation of your mortgage now. He said that is why when you do a closing you have a vendor's affidavit.

Amanda Mosiman asked but nobody catches that, which is my point. She said I mean I get what you are saying but...

Jeff Willis said yeah, I have never had a title company tell me that.

Amanda Mosiman said no.

Richard Reid said true.

Attorney Stahl said well, I don't know if you have ever bought a house in a PUD or a property. He said but you know, if you have a Use and Development Commitment, if you have PUD, that is two other layers of regulation right there and you have to, you know, you have to make certain verifications with the use of the property and the compliance with the zoning laws so it is not as though somebody buying it wouldn't know about it.

Amanda Mosiman said oh, you can buy something and not know plenty.

Attorney Stahl said oh, well I agree about that but I guess I am saying...

Amanda Mosiman said I get what you are saying.

Attorney Stahl said you wouldn't buy it and not be told about it. He said you may not understand what it says but there is nothing, you know... there is no fixing stupid.

Amanda Mosiman said precisely to my point.

Attorney Stahl said right, but you have that problem in any scenario.

Amanda Mosiman said yeah, you do.

Attorney Stahl said so from a regulatory standpoint this to me seems less problematic, less objectionable than some of the other things that we run into all the time. He said you know there was a property in Vanderburgh County out on the west side kind of in the country and the owner wanted to put an apartment in his pole barn and the planning commission said no, you can't do that and he said you got to be kidding me and the next thing you know and Morrie you may have noticed this, this was about three years ago, all of a sudden there is a bill in the General Assembly to change the statutes such that it took away the Board of Zoning Appeals to make a decision and pushed it over to the legislative body and the only reason for that was that guy was mad because if he wanted a Special Use permit he couldn't talk to the Board of Zoning Appeals members ahead of time and lobby them but he could always talk to 3 County Commissioner's and I mean that is and outrageous link to go to just because you are mad, you know, that you want an apartment in your pole barn but that stuff happens all the time.

Amanda Mosiman said especially with state legislature.

Attorney Stahl said well that is true.

Richard Reid said he probably did it anyway.

Attorney Stahl said he probably did.

Amanda Mosiman said alright, anybody got any burning ideas.

Attorney Doll asked what about removing the kitchen. He asked can we talk about that.

Attorney Stahl said sure.

Attorney Doll said you, in your introductory remark, said maybe that is an option. He said if we remove the kitchen I don't think it is a residence.

Amanda Mosiman said nope.

President Valiant said well yeah, we have done that.

Attorney Doll said we have done that before.

President Valiant said yeah.

Attorney Doll added in Warrick County. He said talk about that, what, how... obviously you want a kitchen but is it essential to your clients application.

Attorney Stahl said well it certainly would be the hope to have the kitchen and I think that the... if you can't have it, you can't have it but I am using up the oxygen trying to have it. He said I mean if the bottom line is that you can't then it needs to be taken out so...

Attorney Doll said well we have precedent at this Board where we have approved separate structures that didn't have a kitchen and I am just curious that if your application came in and it didn't have a kitchen and the understanding would be it could not have a kitchen that seems to me to be the simplest way to comply with the statute and the ordinance.

Attorney Stahl said if that complies with the ordinance, that is fine and then we wouldn't need to go with the rigmarole with the PUD or the UDC or the other alphabet.

Attorney Doll asked Molly, what do you think of that.

Mrs. Barnhill said well that would make it fit as an accessory structure if there is no kitchen.

Attorney Stahl said even though it is not occupied by employees. He said well then employee structures don't say anything about kitchens.

Amanda Mosiman said right.

Attorney Doll said yeah, we don't need employees. He said the other ones, frankly we don't have any care about who it is in the incidental structure just as long as it doesn't have a kitchen.

Richard Reid asked would a wet bar work, like a sink and a microwave or...

Attorney Doll said it's not a kitchen.

President Valiant said Morrie, can I throw something out here. He said so you know we have ran into this before with like mother-in-law suites and stuff like that but I think Dirk brought up a great point in why have the definition of guest house if there is no where we can use it.

Amanda Mosiman said no where to use it, that's a good point.

Attorney Doll said well but it is beyond our ability to address that really. He added that has to be done by the Commissioner's. He said they have the authority to change the statute.

President Valiant said exactly, however...

Attorney Stahl said unless you consider that to be under an "other use".

President Valiant said right.

Amanda Mosiman said mhm.

Attorney Doll said boy, you know, I am really hesitant to create our own definition of other use without any precedent at all when you know, you could lobby the Commissioner's, you could ask the Commissioner's to amend the ordinance and put guest house in some district but the problem is this is Agriculture right now and I don't know if that would be the district the Commissioner's would decide to put it in or if they would put it in a residential district.

Amanda Mosiman said we have so much residential in agriculture in this county it's...

Attorney Stahl said well you would think that...

Mrs. Barnhill said well we have residences in commercial too.

Amanda Mosiman said yeah, I know.

Mrs. Barnhill said you would have to just put it in all of them.

Attorney Doll said I think the simplest, easiest, cleanest way is to take the kitchen out.

Mrs. Barnhill asked the whole kitchen.

Attorney Doll said well I don't think you have to delete the footprint but I think you have to take the kitchen out. He said I mean to Richards point, I think you can have a microwave and a...

Richard Reid said a little sink in there.

Attorney Doll said and even an under the counter refrigerator. He said I mean our law offices have those kinds of facilities so...

Attorney Stahl said sure.

Attorney Doll said I don't think that constitutes a kitchen but to have a range, to have an oven, to have a dishwasher, or a full scale refrigerator, I think is the essence of a kitchen.

President Valiant said I just feel like we are taking the easy way out, I mean you know...

Attorney Doll said well we are.

President Valiant continued everybody that builds a pole barn now days puts some sort of little kitchenette area in there and you know, if my mother-in-law if I wanted to build her a place to live in my backyard, you know, god bless Mr. Hubbard for having the money to build this successor house that they can use for multi-uses, he has already said 10 times that nobody is going to live there permanently. He said kids get older, the older kid wants to go out there.

Attorney Doll said well it is not my vote, it's the Boards and if you want to...

President Valiant said I know, I am just saying.

Attorney Doll said and if you want us to define it as other and restrict it that is up to this Board. He said my recommendation would be that it goes back to the Commissioner's and they put a guest house in a specific district or districts where they think it would be appropriate.

President Valiant said because correct me if I am wrong, anybody right now in this County could not have a guest house on their property no matter the zoning, correct.

Amanda Mosiman said correct, that's the way it reads and I am confused.

Jeff Willis added 400 acres and they can't have a guest house.

Amanda Mosiman said right.

Mrs. Barnhill said they would have to put it in the zoning and they would have to change the definition.

Attorney Doll said that is right.

President Valiant said so that is definitely something I think we should address, just my opinion.

Amanda Mosiman said agreed.

Jeff Willis asked what would happen if they hired somebody, built them an employee's quarters and then found someone to work for them.

President Valiant said I mean we could what if it to death, I mean.

Attorney Stahl said sure.

President Valiant said what if he hired his children, I mean.

Amanda Mosiman said that is what I was going for earlier.

President Valiant added then they could live in the house, you know.

Amanda Mosiman said can we just get a kid hired on contract and...



President Valiant said right, we could what if it to death but having the UDC would control it.

Attorney Doll said this is a big investment.

Amanda Mosiman agreed it is.

Attorney Doll said I don't think you want to do it in a way that is subject to legal challenge.

Attorney Stahl said sure.

Attorney Doll said I think you want it to be certain. He said the greatest extent of certainty is if the Commissioner's would amend the ordinance and place this use in a district, or districts, or all residential districts. He said I don't care, that is policy. He added they get to make that and then we have something to come in here and say okay, Dirk you can put a... your client can put an accessory building that is a residence on the same lot, on the same parcel.

Attorney Stahl said the concern that I have with going through the process, and I understand that a PUD which is also a rezoning which is also an ordinance but going through the process of asking them to change something for the entire County is less certain in my mind than asking them to approve something that is by very definition restricted to this one lot.

Attorney Doll said oh I agree, I understand.

Attorney Stahl said and also they have two mortgages right now, they live in a different house. He said this house is not occupied.

Attorney Doll asked the 7,000 square foot home is not occupied.

Attorney Stahl said that is correct.

Attorney Doll said well that is a choice.

Attorney Stahl said well I understand but it was a choice made with no appreciation of what the conundrum that has been presented here.

Adam Hubbard, property owner, came to the podium.

Adam Hubbard said my one question is what degree of connection would the two structures have to have to be approved with a kitchen because esthetically I do not want to connect them. He said I would like it to be a separate guest, cottage but if that is what it took I would be willing to have it redesigned to connect the two structures in some manner.

Amanda Mosiman asked so then it would just be an addition basically.

Adam Hubbard said in a sense, I don't know that I... based on where it is located I don't know that I could connect it because it would have to connect to the master bedroom and library and I

don't there is going to be a hallway there. He added but I could connect it with a roof line, certainly so that you could walk between structures.

Mrs. Barnhill said we do additions as defined by the Building Commission as a substantial addition to the home... so it has to be... I forget how he says it... it is some sort of building terminology so I would just differ that to the Building Inspector.

Attorney Doll said I am thinking of the pool we approved when the physician bought the two lots in Wyndam...

Adam Hubbard asked Wyngate.

Attorney Doll said maybe Wyngate, the... do you remember that.

Richard Reid said yeah.

Attorney Doll said we made them... they wanted to have a stand alone pool house and we said no you cant do that because I don't recall if they had merged the two lots, I think they had. He said so they wanted to have guest quarters and we suggested that we might approve it if they connected it to the main house and they did that. He said I don't recall... we have done that since probably right before you took over, Sherri Rector was the one that was here at the time. He said so that concept has been seen by the Board before although nobody is remembering that.

Jeff Willis said I remember hearing about that happening in Evansville, but...

Attorney Stahl said for what's it worth, and I say this with all humility because I understand the position that everybody is in but there is a first time for everything.

Attorney Doll said yeah, but there is also a precedent. He added if you do it, it becomes very difficult to face it the next time and say well, yeah were not going to approve it anymore.

Attorney Stahl said well I guess what I meant is that is why if you do it in such a way that it is so specific that you could always, or almost always, find a way to distinguish...

Attorney Doll said to discriminate it yeah.

Attorney Stahl said yeah, to distinguish this case from another one for the next person who comes in then... I mean that is what I always tell my Commission is that, you know, stop talking about precedent because I don't want somebody to sue us based on that. He added it is... every case is unique but I guess to go back to the idea of connecting the two, we would need to know what that means. He said whether that is a roof or a wall or a...

Attorney Doll said I think in the case of the previous case it was the roof.

Attorney Stahl asked with the pool house.

Amanda Mosiman said mhm.

Attorney Doll said and it had sleeping quarters, etc. in that pool house.

Attorney Stahl asked did it have a kitchen.

Attorney Doll said you know I don't remember.

Amanda Mosiman said they wanted it to be able to entertain and not have to go into the other house, so yes I do remember the kitchen being a point with that.

Mrs. Barnhill said yeah, as long as it's an addition to the house it can have multiple kitchens. She added it just had to be a substantial addition, common roof, common wall, and...

Attorney Doll said we could drive by it, I could show where it is but that is about all of my recollection on how we fixed that problem. He said it came in initially as a standalone and we really had difficulty doing that and that was the compromise was reconfiguring it so that it was an attachment to the original home, an addition.

President Valiant asked is there a timeline that you are worried about, are you wanting to live in this structure while the remodeling is being done. He asked is that why you don't want to go through the Commissioner's and maybe a delayed time frame.

Adam Hubbard said sure, I am already moved out so I own two homes and construction of the main home is delayed because the guest house was going to be built at the same time.

President Valiant said okay, okay.

Adam Hubbard added and the financing is delayed because the plans hadn't been approved and so the assessor, or the appraiser can't get to the bank.

Mrs. Barnhill said so our definition of a building principle, "where the other structures attach to the principle building is in a substantial manner as by a roof, such structures shall be deemed a part of the principle building".

Attorney Doll said the roof is the key.

Mrs. Barnhill said yes.

Adam Hubbard said so no wall, the wall would be the difficult thing because it would mean you would have to go through the master bedroom to get into the guest which would not be acceptable.

Attorney Doll said yeah, not acceptable. He said well it depends you said you were going to have to relocate the guest house. He asked where else might you put it.

Adam Hubbard said we would not have to relocate it, we would just have to connect via a roof and basically a breezeway I think to have a pathway to get there.

Attorney Stahl asked Molly, where were you reading. He asked was that in the definition of...

Mrs. Barnhill said building principle, definitions, page 9.

Attorney Doll said I think if you tie it to the main house that would be the simplest solution.

President Valiant said simplest. He asked how far away is that about, how many feet you think from your proposed guest house to the main house.

Adam Hubbard said it is probably 30 feet.

Attorney Stahl said it looks like about 30 feet.

President Valiant said 30, okay.

Amanda Mosiman said okay. She said it is my feeling that that is probably the least complicated way too, just for this use, future use, you know, without taking the kitchen out.

Richard Reid said you can keep the kitchen.

President Valiant said it gets you everything you want. I know that long breezeway is not ideal.

Amanda Mosiman said I understand the added expense but the other ways are going to add time so... which for the sake of the Board we probably need to address the guest house situation and figure something out.

President Valiant said absolutely.

Richard Reid said yeah.

President Valiant said yeah, we need to get that going.

Attorney Stahl asked so just to be clear, we are talking about redrawing the plans.

Attorney Doll said well actually you are just modifying the plans.

Attorney Stahl said well that is what I mean by adding some kind of...

Attorney Doll said some kind of a roof connection.

Attorney Stahl said okay.

Adam Hubbard said versus taking the kitchen out. He said those are the two options.

Attorney Stahl said right, so then there would be an addition.

Richard Reid asked could you flip it around so the garage is closer on the guest house to that other house so you could connect it easier. He said you know that would save you...

Jeff Willis said he would be driving through the front yard then.

Adam Hubbard said I couldn't access the garage that way so...

Richard Reid said oh, okay.

Attorney Stahl said it is a side load garage as it sits, right.

Adam Hubbard said yes.

Attorney Doll said I am sorry, I misunderstood something maybe. He asked the bedroom that doesn't have a hallway type connection, is that the bedroom in the guest house or the main house.

Adam Hubbard said the main house that just couldn't have a hallway.

Attorney Doll said yeah, thanks.

Attorney Stahl said okay.

Attorney Doll asked Dirk is that okay.

Attorney Stahl said I mean if that is something you are willing to pursue with your architect.

Adam Hubbard said if that is what we have to do.

Attorney Doll said you don't have any other questions about that.

Attorney Stahl said no, it just needs a roof and then he can get what he wants.

Amanda Mosiman said mhm.

Attorney Doll said yep. He said Molly, is that right.

Mrs. Barnhill said yes.

Attorney Stahl said okay, thanks.

Adam Hubbard said thanks for your time, I really appreciate it.

President Valiant said absolutely, thank you.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Richard Reid made a motion to adjourn at 7:49 PM. Greg Webb seconded and the motion carried unanimously.

ATTEST:

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Molly Barnhill, Executive Director

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Jeff Valiant, President