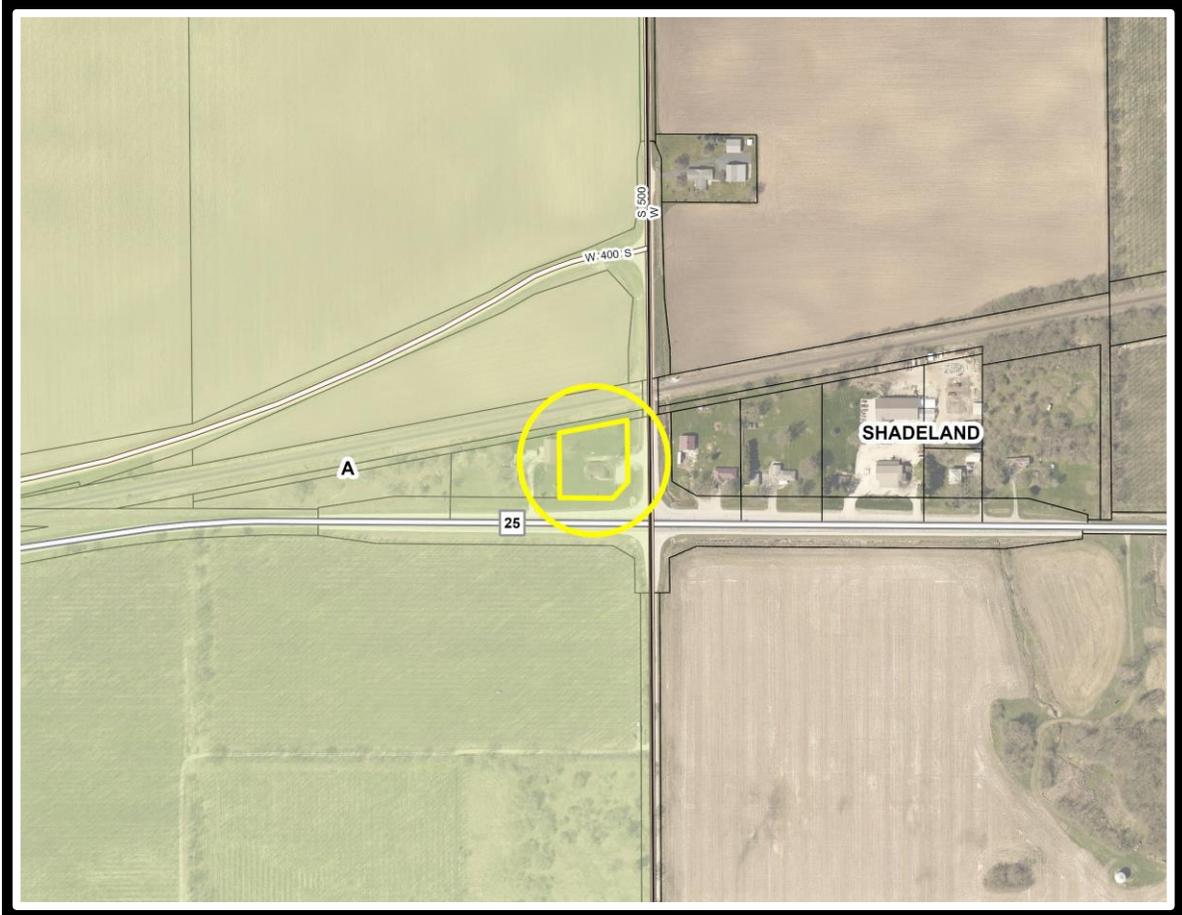

Z-2800
JOSHUA SHIVES
(A to GB with commitment)

REVISED STAFF REPORT
September 10, 2020



**Z-2800
JOSHUA SHIVES
A to GB
with commitment**

**Revised Staff Report
September 10, 2020**

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, who is also the owner, is requesting rezoning of Lot 2 of Oliver Subdivision, 0.917 acres in area, located at the northwest corner of SR 25 W and CR 500 W, more specifically 5000 SR 25 West, in Wayne, 22 (SE) 22-5. The petitioner plans to sell ATVs, UTVs and Jeeps at this location.

PLEASE NOTE:

This case was heard at the August 19th Area Plan Commission meeting and continued to the September meeting so petitioner could add a commitment. The commitment submitted lists many uses that would be prohibited from this site including adult businesses as well as a gas service station. Although this commitment prohibits many incompatible uses from locating on site in the future; based on the Comprehensive Plan, staff cannot recommend commercial zoning of a site without sewer and water.

ZONING HISTORY AND AREA ZONING PATTERNS:

This property is currently zoned A, Agricultural. All property within a mile of this site to the north, west and south is also zoned A. Land to the east across CR 500 W is within the Town of Shadeland; the town is not a participating member of the Area Plan Commission.

AREA LAND USE PATTERNS:

This property was subdivided in 2008. Prior to the subdivision the house and a veterinarian clinic were located on one lot. The vet clinic, a use permitted by right in the A zone, is the building in this request. A landscaping business is located to the east in Shadeland. Most surrounding uses are agricultural or large lot single-family homes; there are houses to the east in Shadeland and a house next door to the west. Railroad tracks are adjacent to the north. South across SR 25 is a tree farm.

TRAFFIC AND TRANSPORTATION:

SR 25 West is classified as a rural secondary and CR 500 West is considered a local road by the adopted *Thoroughfare Plan*. The building on site meets the required setbacks based on the aerial and parcel data.

Paved parking and maneuvering aisles are a requirement of uses located in the GB zone. This site will need drainage approval from the county surveyor if there is additional land used for parking and maneuvering. Required parking for the proposed use is 1 space per 400 square foot of gross floor area.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

A 20' type B bufferyard is required when GB zoned property is redeveloped next to A zoned land. Sewer and water are not available at this location. According to the health department, the site has an onsite septic for a few employees.

STAFF COMMENTS:

The petitioner is proposing to run an ATV, UTV, and Jeep dealership at this location. According to the petitioner many people drive by this location on the way to the Badlands Off-Road Park in Attica to drive off-road vehicles. The petitioner would like to locate a business at this location to capitalize on the passing traffic.

GB zoning allows buildings to cover up to 60% of the lot and only requires 10% vegetative cover; this development pattern is fine in an urban area but does not match the surrounding area. The proposed use is similar in nature to a car dealership. Even with the commitment, there are numerous potential uses that could be considered a nuisance to the adjacent single-family home. There is no noise ordinance in the county, so any business could operate 24 hours a day becoming a larger issue for the neighbor. Sewer and water are not available to this site; the Comprehensive Plan does not recommend commercial zoning for any property unless it is served by sewer and water.

Potential commercial uses here should be limited to those uses permitted by right in the current Agricultural zone; those agricultural-related businesses would fit with the surrounding area and not be considered a detriment to nearby residences.

STAFF RECOMMENDATION:

Denial

Key Number 140-00402-0024

State Identification Number 79-10-08-400-008.000-028

COMMITMENT

Commitment made on September 3rd, 2020, by Joshua Shives
(the "Petitioner") pursuant to Indiana Code Section 36-7-4-1015.

1. Petitioner makes this commitment as the owner (the "Owner") of certain real estate (the "Real Estate") located in Tippecanoe County, Indiana, commonly known as 5000 SR 25 W, West Point, IN 47992 and more particularly described on Exhibit A which is attached hereto and incorporated by reference herein.

or

1. Petitioner makes this commitment with the knowledge and consent of _____ who is the owner (the "Owner") of certain real estate (the "Real Estate") located in Tippecanoe County, Indiana, commonly known as 5000 SR 25 W, West Point, IN 47992 and more particularly described on Exhibit A which is attached hereto and incorporated by reference herein.

2. Petitioner has filed a request (with the consent of the Owner) with the Area Plan Commission of Tippecanoe County, Indiana (the "APC"), to rezone the Real Estate from A to GB which request is pending before the APC as case no. 2800.

3. Petitioner hereby agrees and makes the following commitment in connection with the rezoning request in case no. 2800:

Property will not be used for the following uses:

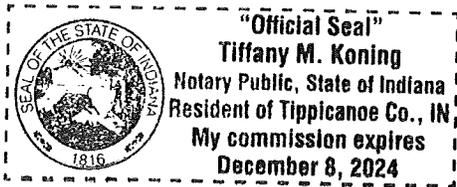
Adult Bookstore, Adult cabaret, Adult drive-in motion picture theaters, Adult live entertainment arcade, Adult motion picture arcade, Adult motion picture theaters and adult mini motion picture theaters, Gasoline service stations

4. Petitioner understands and agrees that this commitment is given to the APC and the Tippecanoe County Commissioners (the "Legislative Body") as an inducement for the recommendation for and approval of the rezoning request in case no. 2800. Petitioner further understands and agrees that the approval of the rezoning request in case no. 2800 by the Legislative Body constitutes good and valuable consideration for the giving of this commitment.

5. This commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change or modification of this commitment shall only be made with the approval of the APC at a public hearing in accordance with all rules and regulations of the APC.

6. Petitioner agrees that each of the following shall each be a "specially affected person" under Indiana Code Section 36-7-4-1015(d)(3) who shall each independently be entitled to bring an action to enforce the terms and conditions of this commitment in the Circuit or Superior Courts of Tippecanoe County, Indiana:

- a. the APC,
- b. the Area Board of Zoning Appeals of Tippecanoe County, Indiana,
- c. the appropriate Administrative Officer designated in the Unified Zoning Ordinance for Tippecanoe County, Indiana,
- d. _____



[Signature]
By: Joshua Shives

STATE OF INDIANA)
)
COUNTY OF Tippecanoe)

SS:

Before me, the undersigned, a notary public, personally appeared Joshua Shives, and acknowledged the execution of the foregoing commitment on September 3, 2020.

Tiffany M. Koning
_____, notary public
Resident of Tippecanoe County

My commission expires:
December 8, 2024

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. _____

This instrument prepared by: _____

z-2800

ACKNOWLEDGEMENT OF ADMINISTRATIVE OFFICER

I acknowledge that on September 3rd, 2020 I received a signed and
Date

notarized copy of the Commitment filed by Joshua Shives
Petitioner(s)

for a rezoning petition from A to GB. The property included in the

rezoning petition is located at 5000 SR 25 W, West Point, IN 47992
Street Address or Common Description

more particularly described in Exhibit A attached.



Signature of Administrative Officer or Authorized Designee