

z- 2693

ORDINANCE NO. 2017-11-CM
AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF TIPPECANOE
COUNTY, INDIANA, TO REZONE CERTAIN REAL ESTATE
FROM I-3 TO A

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF TIPPECANOE COUNTY, INDIANA:

Section 1: The Unified Zoning Ordinance of Tippecanoe County, Indiana, being a separate ordinance and not part of a unified county code is hereby amended to rezone the following described real estate situated in Wabash Township, Tippecanoe County, Indiana

A part of a tract of land owned by Gordon Edward Bennett, Trustee of the Gordon Edward Bennett Living Trust, as recorded in Document Number 9716082 and 04001132 in the Office of the Recorder of Tippecanoe County, Indiana, and being a part of the West Half of the Northeast Quarter of Section 27, Township 23 North, Range 5 West, Wabash Township, Tippecanoe County, Indiana, described as follows: Beginning at the Northwest corner of the Northeast Quarter of said Section 27; thence North 89° 28' 19" East (Bearings are based on Tippecanoe County Section Corner Perpetuation Project) 1,131.23 feet along the North line of the Northeast Quarter of said Section 27 and along the approximate center line of Division Road and its extension, to the West line of an area Zoned Agricultural; thence South 00° 11' 01" West 2,238.06 feet along the West line of the area Zoned Agricultural; thence South 44° 36' 39" West 139.27 feet; thence South 54° 09' 54" West 58.77 feet to the Northeast corner of the area Zoned R1; thence following the area Zoned R1 the following Two (2) courses: thence (1) North 51° 31' 14" West 111.14 feet; thence (2) South 38° 30' 51" West 674.19 feet to the approximate center line of South River Road; thence following the approximate center line of South River Road the following Three (3) courses: thence (1) Northwesterly 222.79 feet along a curve to the right with a radius of 910.54 feet and subtended by a long chord having a bearing of North 40° 58' 48" West and a length of 222.23 feet; thence (2) North 33° 58' 14" West 319.73 feet to a tangent curve; thence (3) Northwesterly 185.42 feet along a curve to the left with a radius of 764.57 feet and subtended by a long chord having a bearing of North 40° 55' 06" West and a length of 184.97 feet, to the West line of the Northeast Quarter of said Section 27; thence North 00° 40' 05" West 2,247.01 feet along the West line of the Northeast Quarter of said Section 27 and the approximate center line of County Road 350 West and its extension, to the Point of Beginning and containing 63.885 Acres.

Section 2: The above-described real estate should be and the same is hereby rezoned from I-3 to A.

Section 3: This ordinance shall be in full force and effect from and after its adoption.

(Adopted And Passed) (Denied) by the Board Of Commissioners of Tippecanoe County, Indiana, this 3 day of July, 2017.

VOTE:

yes

David S Byers
David Byers, President

absent
Tracy Brown, Vice President

yes

Thomas Murtaugh
Thomas Murtaugh, Member

ATTEST:

Robert Plantenga
Robert Plantenga, Auditor

THE

Area Plan Commission

of TIPPECANOE COUNTY

20 NORTH 3RD STREET
LAFAYETTE, INDIANA 47901-1209

(765) 423-9242
(765) 423-9154 [FAX]
www.tippecanoe.in.gov/apc

SALLIE DELL FAHEY
EXECUTIVE DIRECTOR

June 22, 2017
Ref. No.: 17-202

Tippecanoe County Commissioners
20 North 3rd Street
Lafayette, In 47901

CERTIFICATION

RE: **Z-2693--ADAM C. SCHEFFEE (I3 to A):**

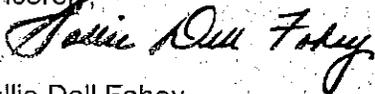
Petitioner is requesting rezoning of 63.885 acres in order to build a house on property bounded by Division Road, CR 350 W, and South River Road in Wabash 27 (NE) 23-5.

Dear Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on June 21, 2017 the Area Plan Commission of Tippecanoe County voted 16 yes - 0 no on the motion to rezone the subject real estate from I3 to A. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their July 3, 2017 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,



Sallie Dell Fahey
Executive Director

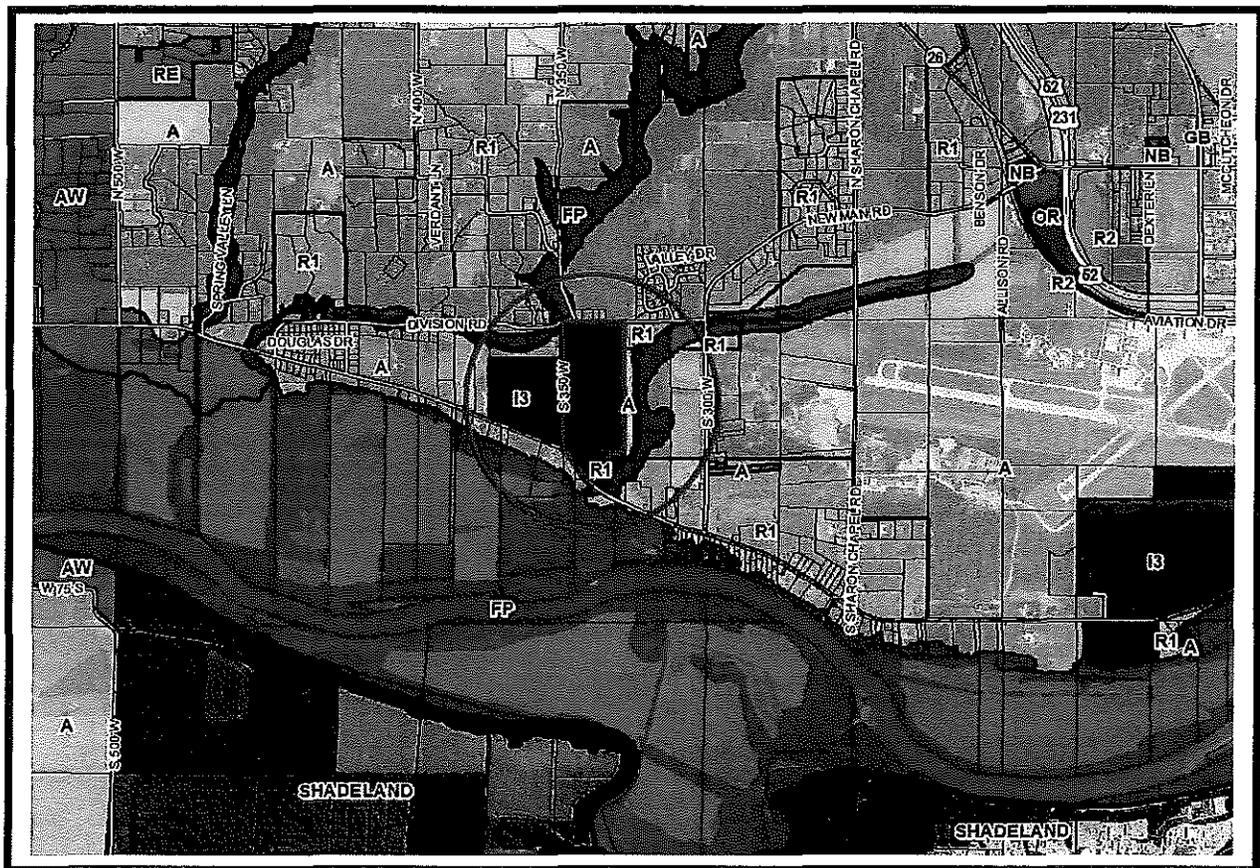
SDF/lmu

Enclosures: Staff Report & Ordinances

cc: Adam Scheffee, Gordon Edward Bennett Trust
Thomas Brooks
Mike Wolf, Tippecanoe Building Commissioners

Z-2693
ADAM C. SCHEFFEE
(I3 to A)

STAFF REPORT
June 15, 2017



Staff Report
June 15, 2017

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, who is one of the owners, with consent from the other owner, Gordon Edward Bennett Trust, is requesting rezoning of 63.885 acres in order to build a house on property bounded by Division Road, CR 350 W, and South River Road in Wabash 27 (NE) 23-5.

This petition includes two tracts of land. If the rezone request is approved, the owner plans to raze the existing house on the smaller tract with access to River Road and build a new home on the larger tract with possible access from 350 W.

ZONING HISTORY AND AREA ZONING PATTERNS:

The tracts in this request have I3, A and FP zoning. Petitioner through this request intends to rezone only a large portion of the I3 zoned area (the legal description submitted with this petition excludes areas that are zoned A and FP in the same tract of land).

The property to the west across 350 W is also zoned I3. A sliver of Agricultural zoning exists adjacent to the east whereas I3 and R1 zones line the area to the southeast on the same property. Properties to the south across South River Road are zoned I3, FP and A. Flood Plain zoning associated with an unnamed tributary (UNT) merges with the Wabash River farther to the east and southeast of the area in this petition.

The I3 zoning on site is shown on our oldest zoning maps because of the possibility of sand and gravel mining which was prevalent in this area. The R1 zoned property to the southeast was rezoned in 1979 from the Industrial zone (Z-927).

AREA LAND USE PATTERNS:

This petition includes two adjoining tracts. One is a larger piece of land, roughly 62 acres, currently used as a farm field, which is located at the southeast corner of 350 W and Division Road and stretches south to River Road. The second tract is approximately 1 acre in area with a single-family dwelling petitioner plans to raze, located at the northeast corner of South River Road and 350 W.

Multiple single-family residences line South River Road along with a few properties that are used for agricultural purposes. Homes in older platted subdivisions to the southeast and the northwest of the properties in this request have also developed along South River Road.

TRAFFIC AND TRANSPORTATION:

According to the adopted *Thoroughfare Plan* South River Road is classified as rural secondary arterial whereas Division Road at this location and 350 W are classified as rural local roads. Average daily trip counts taken in 2014 indicate 337 vehicles traveled on

Division Road. The number of vehicles traveled on 350 W and South River Road in 2015 was 277 and 1,925 respectively.

South River Road in this location is part of the Wabash River Scenic Byway.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

According to the County Health Department, the tract with a single-family home is on septic and well. However, any additional development on the larger tract would require the necessary review and approval from the County Health Department, Highway Department and Drainage Board. If this request is approved, petitioner indicated that vehicular access for the proposed house would be from 350 W.

If this request is approved no bufferyard installation would be needed.

STAFF COMMENTS:

Petitioner intends to build a home on this site if the rezone request is approved because the current industrial zone does not permit any residential use at this location. While the tract owned by the petitioner has three different zones, (I3, A and FP) this request only includes a large portion of the property that is zoned I3. Although at one time these tracts along with the tract to the west across 350 W were identified as sites appropriate for sand and gravel mining, it has only ever been used for agricultural purposes.

At the APC Executive Committee meeting in 2014, staff proposed that the Area Plan Commission sponsor a rezone of a large area west of US 231 (including the properties in this request) and south of Purdue Airport where mining operations had ended. Staff argued that the I3 zone with no sanitary sewer and public water should be downzoned to a more appropriate Agricultural zone. Among various issues discussed at that meeting, the question of whether or not this constituted a “taking” under Indiana law was of foremost concern. Attorneys Jay Seeger and Zack Williams presented a memorandum to address this concern after conducting an extensive research on Indiana court cases related to “takings”. The memorandum stated that if a landowner can present evidence that a rezoning would preclude any reasonable use of his land, then the court may find it unconstitutional and block the rezone. It further stated that as the properties in question then were already used for agricultural purposes, the courts may not view the APC-prompted rezone as a “taking”. Although staff has not launched the process of rezoning this area as envisioned, the initial argument put forth by staff remains unchanged.

In this case, as the property owners filed this request on their own accord, commission member’s concerns regarding a “taking” would not be relevant. A land owner initiated rezone which aligns with staff’s vision of downzoning industrially zoned properties with no sanitary sewer and public water access to a more appropriate agricultural zone is supportable. Furthermore, River Road at this location is part of the Wabash River Scenic Byway; staff would prefer agricultural uses that embolden this designation and which would also allow petitioner to build a new home on his land.

STAFF RECOMMENDATION:

Approval