AREA PLAN COMMISSION OF TIPPECANOE COUNTY
MINUTES OF A PUBLIC HEARING

DATE................................................................. November 17, 2021
TIME........................................................................ 6:00 P.M.
PLACE..................................................................... County Office Building
..................................................................... 20 North 3rd Street
..................................................................... Lafayette, IN 47901

This meeting was held in-person. Members of the public may watch the video of the meeting at
https://www.facebook.com/TippecanoeCountyIndiana or
https://www.youtube.com/channel/UCJleeA9ZQo9E11GdZTdjurQ/featured

MEMBERS PRESENT
Vicki Pearl
Bob Metzger
Carla Snodgrass
Larry Leverenz
Diana Luper
Tracy Brown
Jackson Bogan
Perry Brown
Kathy Parker
Lisa Dullum
Gary Schroeder
Jerry Reynolds
Jason Dombkowski
Greg Jones
Jody Hamilton
Tom Murtaugh
Michelle Dennis

MEMBERS ABSENT
David Hittle
Ryan O’Gara
Eric Burns, Atty
Aria Staiger
Jennifer Ewen

STAFF PRESENT
Larry Leverenz
Aria Staiger

The Area Plan Commission of Tippecanoe County Public Hearing was held in-person on the 17th day of
November 2021 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Jackson Bogan called the meeting to order.

Attorney, Eric Burns, called the roll to establish members present.

I. BRIEFING SESSION

David Hittle noted that there is one request for continuance. The petitioner for Z-2844 INTERNATIONAL
CHURCH OF THE FOURSQUARE GOSPEL (PDRS to NB) has requested a continuance to the
December 15th APC meeting. The other three case are going to go forward tonight.

II. APPROVAL OF THE MINUTES

Gary Schroeder moved to approve the minutes from the October 20, 2021 meeting. Greg Jones
seconded, and the motion carried by unanimous voice vote.
III. NEW BUSINESS

None.

IV. PUBLIC HEARING

Jackson Bogan read the meeting procedures.

Gary Schroeder moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Plan Commission, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Greg Jones seconded, and the motion carried by unanimous voice vote.

Gary Schroeder moved Z-2844 INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL (PDRS to NB) be continued to the December 15th APC public hearing agenda at the petitioner's request. Greg Jones seconded, and the motion carried by unanimous voice vote.

A. Subdivisions

Gary Schroeder moved to hear and vote on S-5041 THREE MEADOWS SUBDIVISION, SECTION 2 (major-preliminary). Greg Jones seconded.

1. S-5041 THREE MEADOWS SUBDIVISION, SECTION 2 (major-preliminary):

Petitioner is seeking preliminary subdivision approval of 67 single-family lots plus five outlots on 40.616 acres, on property located on the south side of Lindberg Road, between Klondike and US 52 in Wabash 14 (NW) 23-5.

APC staff Ryan O'Gara presented the staff report, zoning, and aerial photos. He stated this is in the unincorporated county adjacent to the city limits to the east. The approval before you is for a 67-lot plus five outlots addition to the existing subdivision. We will see an extension into this area from the original phase. Apart from the 67 lots, the five outlots included in this new 40-acre section take up about 15 acres total which will be used for stormwater detention, recreation, and landscaping. A good portion of the site is wooded except for the center portion. The area has been largely developed all around it. In terms of the roadways, the existing 40 ft. half width rights-of-way shown for Lindberg Road and Klondike Road meet the requirements for secondary arterials according to the Thoroughfare Plan. No new access to Klondike Road is proposed. There will be one entrance from Lindberg Road which is known as Petit Drive, and the continuation of the Three Meadows Drive from Section 1. Beyond that, there is “no vehicular access” in other places there. The standard pavement width for new urban local streets, the non-secondary, is 30 ft. measured from the back of curbs. The petitioner did apply for a variance to reduce that to 28 ft., but that variance request failed procedurally due to lack of a motion. I think, a motion was taken, but not seconded before the Board of County Commissioners, so that variance did not succeed. That variance will need to be reflected in your vote, as well, unless I am mistaken. The 30 ft. widths will have to be incorporated into the plans. In terms of the conditions, the rest are all standard. Staff is recommending conditional approval, and bonding is being requested.

Jackson Bogan called the petitioner or the petitioner's representative.

Kyle Betz, Fisher Engineering, 625 South Earl Ave., representative for the petitioner, stated we have reviewed the staff recommendations for their conditions, and we do understand the request for the variance
for reduction of street width has not been accepted, and we understand that those two streets will need to comply with the 30 ft. road width requirement. We do not have any objections to the conditions that were presented, and I would be happy to answer any questions.

Jackson Bogan asked for any questions from the commission members.

Vicki Pearl asked for clarification regarding the two variances. She asked if one was approved, and the other was denied, or were they both denied.

Ryan O’Gara stated both variances were unsuccessful.

Kyle Betz stated no motion was made on either variance, therefore they were not approved.

Eric Burns stated that has been decided, so you don’t have to vote on that. I don’t think there is any need to have that on there.

Ryan O’Gara stated procedurally it is no different from a denial. The commissioners didn’t vote for a denial. The commissioners just didn’t vote which denied it.

Eric Burns stated correct; it is the same thing.

Eric Burns stated you don’t need to vote on that; it has already been denied, and they understand that they are going to comply.

Gary Schroeder asked technically is their vote just a recommendation; why are we hearing the variance.

Eric Burns stated we don’t need to hear the variance. The petitioner is taking the position that they are going to comply with the 30 ft.

Kyle Betz responded yes, I was merely stating that the decision has been made, and we are not in objection to anything.

Eric Burns stated they are not asking for any relief on that. They are going to take the 30 ft.

Ryan O’Gara stated yes, the locality controls. He stated it is the locality streets, so the locality decides on the variance request. They decided in a way by not voting, so therefore it was essentially denied.

Eric Burns agreed with Ryan.

Ryan O’Gara stated we, as a body, simply confirm that vote in your vote.

Eric Burns stated we can certainly vote on it.

Ryan O’Gara stated but you can’t, for the Subdivision Ordinance, overturn the locality of a variance, so you are compelled to accept it.

Eric Burns stated that is right. That is why procedurally we need to do nothing.

Ryan O’Gara stated okay.

Jackson Bogan stated we will remove this form from the packet, and our vote on the actual subdivision will require the 30 ft. streets are in compliance on our normal vote, correct.

Eric Burns stated that is correct.

Jackson Bogan asked for any questions.
Jason Dombkowski asked Ryan did I hear you say it is adjacent to the city limits of West Lafayette.

Ryan O’Gara stated it is nearby. It is not immediately adjacent, but the city limits are just off to the west on the other side of the railroad tracks.

Jason Dombkowski stated literally on the other side of the tracks.

Ryan O’Gara stated I believe the tracks are the boundary.

Jason Dombkowski asked if the access will only be off of Lindberg Road and not Klondike Road.

Ryan O’Gara stated correct, because it achieves access to Klondike Road from the extension of the Three Meadows Drive into this site.

Jackson Bogan asked if anyone wished to speak in favor or in opposition of this petition. There was no response. He asked for any questions. There were none. Mr. Bogan called for a vote.

Jackson Bogan stated they are requesting bonding.

Jackson Bogan noted we do not need to vote on the variance.

Ryan O’Gara collected the ballots and noted 17-Yes to 0-No for conditional primary approval of S-5041.

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Gary Schroeder moved to hear and vote on S-5042 SAGAMORE COMMONS SUBDIVISION, REVISION #2 (major-preliminary), with bonding. Greg Jones seconded.

2. S-5042 SAGAMORE COMMONS SUBDIVISION, REVISION #2 (major-preliminary):
    Petitioner is seeking preliminary approval of ten commercial lots on 17.37 acres, located on Sachem Blvd between Sagamore Parkway and Sachem Court South, in West Lafayette, Wabash 1 (S1/2) 23-5.

APC staff Ryan O’Gara presented the staff report with several exhibits including a zoning map and aerial photos. He stated this is a GB zone with commitment. The approval before you is a second revision to the previously approved preliminary plat. This one includes 10 commercial lots on a little over 17 acres located on the southwest side of Sagamore Parkway in West Lafayette at the new Sachem Boulevard which is just north of Cumberland Avenue. The first installments are already in place. Culver’s restaurant
is on Lot 3, and Lot 4 is currently under construction for a Popeyes restaurant. The plat for Lot 3 included right-of-way for the public streets. All the streets in the aerial photo, have been accepted for maintenance. Lot 7 located in the western half of the site, was transferred to the adjoining White Horse Christian Church property which is just south. Outlot 1 area covers an existing detention pond at the original western boundary; that is the low area along the county regulated drain. The street shown on the previously approved preliminary plat that was shown as a public street has been removed and replaced by a private street in an access easement/outlot. The most significant change to this is the new street connection to Cumberland Avenue which you can see here to the south. This change was essentially mandated by that commitment and included with the rezone from OR to GB approved by the city council in May 2018. The new street will provide a much needed second way in and out to this site. This will relieve a lot of pressure off of Sagamore Parkway. The revised preliminary plat reconfigures the 20-acre site into seven lots; however since it is a commercial subdivision, these lot lines are subject to change in final platting when actual construction plans come in to build something, so these are essentially placeholders. What can’t change is the street design, so that is essentially what we are fixing in place here. The other lots that are proposed here, besides the two that are completed or under construction Lots 3 and 4, the lot lines can jostle around depending on the nature of the commercial development being offered. Public utilities are available to serve the site. Petitioner has requested permission to bond. All the conditions that follow are fairly standard. We are recommending conditional approval. He offered to answer any questions.

Jackson Bogan asked if the petitioner or the petitioner’s representative wished to speak.

Cameron Seymour, Schneider Geomatics, representing the petitioner of Sagamore Commons, stated we agree with the conditions. We are requesting approval. Tim Stevens of Sagamore Commons would like to comment on item No. 10 of the conditions. He offered to answer any technical questions.

Tim Stevens, Director of Development for Sagamore Commons LLC, 6925 E. 96th Street, Indianapolis, IN, stated he wanted to ask about item No. 10 on the conditions. He stated we accept all the conditions as they have been prepared, but he wanted to make a brief description of why we don’t like item No. 10. He stated he has lived long enough that he has seen projects that have 30 or 35 years worth of covenants amendments. This would be an amendment to the covenants, and normally speaking what happens is you get this string of amendments that becomes very difficult to understand the Declaration of Covenants when you get about 8 or 9 amendments in. There are two reasons why I don’t think it is necessary. First, because the plan commission has a no vehicular access easement shown on this preliminary plat. They have sole control over that. The two lots that have been recorded have shown it in accordance with the preliminary plat that was originally adopted, and they have on-going jurisdiction. You’ve got the ability to say no vehicular access without it being part of the covenants. The second reason is when we got our road cut for Sachem Boulevard onto Sagamore Parkway, we recorded a deed with INDOT that said there will be no other access. It is a limited access right-of-way deed. In other words, that prohibits access just like it does on any of the highways that you are familiar with. I think for those two reasons you have ample regulatory authority to say there will be no vehicular access. We are just trying to avoid an amendment where we have to hire a lawyer, come back, and make a one paragraph amendment to a declaration. It is not a deal breaker, but as a commonsense kind of thing, I think you have adequate power here without making this covenants amendment, and we would just ask that item No. 10 comes off. He offered to answer any questions.

Eric Burns asked Ryan O’Gara if he’s familiar with the INDOT deed.

Ryan O’Gara stated a bit of its history, yes.

Eric Burns stated I understand your point, and I understand your point about the covenants. I think the difference here is whether you call it a covenant change, or you call it a “big stamp on your covenants” that states subject to APC decision based on 11-17-2021; it is really the same thing. I am not sure you need to get lawyers involved. I understand why you don’t want to. The INDOT deed is a little intriguing. I am not sure I have ever seen one. If the deed was no vehicular access, it is the same as this one; is that your understanding Ryan.
Ryan O’Gara stated the history of this site predates me a little bit, but from what I know and from the discussions we’ve had, the access was granted where the current curb cut is at Sagamore Parkway for full access to all directions of Sagamore from this site. Mr. Stevens, correct me if I am wrong, are you opposing the no vehicular access that is shown along Sagamore Parkway on Lots 1, 2, and 5.

Tim Stevens stated we are all for the no vehicular access. That is not a problem. The idea was to pull it into the covenants in addition to everything else.

Eric Burns stated you are looking for a way to avoid having to modify your covenants.

Tim Stevens stated yes, it seems unnecessary. The plan commission already has that authority. It appears on the preliminary plat. We fully acknowledge the need for it, but the fact the you have a back-up of INDOT. We had to describe a line with a legal description that said there shall be no access to the Sagamore Parkway right-of-way accept for this gap, so those access rights have been deeded away.

Eric Burns stated he agrees to the extent that it has already been dealt with, and it is already clear that there is going to be no vehicular access. Our usual policy is to put this on your covenants.

Ryan O’Gara stated yes, it would be irregular to drop it especially when there is no objection to it.

Eric Burns stated the only solace I would suggest is it really doesn’t need to be an amendment to your covenants. There just needs to be a note that refers back to the APC action on November 17, 2021 that states there is going to be no vehicular access, and to me you have then complied fully. You don’t have to go into your covenants and make modifications. I think otherwise it should stand.

Ryan O’Gara stated it sounds reasonable Eric.

Jackson Bogan asked even if it were decided we wanted to remove it are we able to, since this is what was published for the public hearing. Are we able to remove this and vote.

Eric Burns stated yes, you could. I am not sure it is a great policy to start.

Gary Schroeder stated he was considering making a motion just for discussion purposes and give the petitioner his opportunity to debate and hear it, and we can vote it up or down.

Gary Schroeder moved to remove condition No.10 and have that applied to the subdivision covenants. Greg Jones seconded.

Jackson Bogan it is open for discussion.

Larry Leverenz asked Mr. Stevens what is the access to Lot 1.

Tim Stevens stated it is that cul-de-sac that is already platted.

Larry Leverenz stated it appears that cul-de-sac doesn’t really connect to Lot 1.

Tim Stevens stated those lines are utility lines. Lot 1 extends all the way back to the center of that radius on the cul-de-sac. It probably has 50 or 60 feet plus as far as frontage.

Larry Leverenz stated there will be a driveway or an access off of that cul-de-sac into Lot 1. Just like the other lots.

Tim Stevens stated right. To make it clear, we are not opposing the no vehicular access, and it is on the plat that we submitted, and we don’t object to that. We just thought it was unnecessary to add this, and I don’t like to add language that says irrevocable by lot owners, because I don’t know if 40 years down the road there is some reason for it to happen, then we have a covenant change needing to happen in
addition to a plan commission change. I just felt it was unnecessary and was asking for it to be removed for that reason.

Gary Schroeder asked Mr. Stevens from a technical standpoint, did you already sell Lots 3 and 4.

Tim Stevens responded yes.

Gary Schroeder stated I am not sure how you can change a covenants to their lots if they have already bought and agreed to your original covenants.

Tim Stevens stated I think as declarant we have some unilateral rights for amending the declaration, and I don’t think it is a substantive change, because they have already recorded the no vehicular access on their property, but I will yield to a lawyer.

Eric Burns stated to reiterate my point I believe it is not necessary for you to go in and make substantive changes to your covenants. I think, it is sufficient, because it says it is already being voted on, and all you have to do is refer to the action tonight if the action is indeed to impose this covenant. It is different than having to go change it. Is what I am telling you. It is irrevocable by the owners. If the APC decides it, it doesn’t matter what the owners think; it is irrevocable.

Tim Stevens stated that is why I thought it was unnecessary.

Eric Burns stated I am with you. It is a technicality, but I understand why. My suggestion would take care of your problem.

Tim Stevens asked where would we make this note.

Eric Burns stated I would just put it on the face of it.

Tim Stevens asked on the plat.

Eric Burns said yes, as a footnote, refer right back to the action that was taken tonight.

Tim Stevens asked is staff satisfied with that.

Ryan O’Gara responded yes.

Tim Stevens stated sounds good.

Jackson Bogan asked Tim Stevens if that takes care of his concerns.

Tim Stevens responded it sure does.

Gary Schroeder moved to rescind his motion. Greg Jones seconded.

Jackson Bogan stated we are voting on the motion to rescind Gary’s motion.

Eric Burns stated it’s not necessary.

Gary Schroder stated sounds like we solved it.

Jackson Bogan asked if there was any more discussion on no vehicular access. There was no response.

Jackson Bogan asked if there were any questions. There were none. He asked if any persons wished to speak in favor or in opposition of this petition. There was no response. He then called for a vote on a white ballot with bonding for S-5042 SAGAMORE COMMONS SUBDIVISION.
Ryan O’Gara collected the ballots.

The Area Plan Commission voted by ballot 17-Yes to 0-No to recommend approval for S-5042 SAGAMORE COMMONS SUBDIVISION, REVISION #2 (major-preliminary), with bonding.

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B. Rezoning Activities

Gary Schroeder moved to hear and vote on Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY (R1B to GB) with Commitment. Greg Jones seconded.

Tom Murtaugh and Tracy Brown recused themselves.

1. Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY (R1B to GB):

   Petitioner is requesting rezoning of the long-time nonconforming Tippecanoe County Fairgrounds and the former YMCA property adjacent to the north, containing 37.8 acres (Flood Plain zoning has been excepted out) specifically, 1406 Teal Road and 1950 S. 18th Street, Lafayette, Fairfield 33 (NW) 23-4. With Commitment.

   APC staff David Hittle presented the staff report with several exhibits including a zoning map and aerial photos. He stated this is a rezoning case involving a property just under 38 acres. Specifically, it is the county fairgrounds, and the former YMCA building adjoining the fairgrounds which is being converted and used as a county government building. It is zoned R1B for low to medium density single family use, and the request is to rezone it to GB for general business. GB is a commercial district that allows for pretty much anything you can think of and a lot of things that might not be suitable next to a neighborhood or school, so the petitioners’ have included a commitment that states that the only thing the site can be used for is county government use and essentially the fairgrounds in a way that it has historically been used. So that rules out a lot of things you may be able to do in a GB district. It is a very constrained rezoning. The property is surrounded to the north by floodplain, to the west by a residential subdivision, to the east by a school, and to the south by a residential subdivision and a commercial shopping center zoned NB.
This originated because there was a request for a sign, and a sign permit was filed, and the sign that they wanted is not allowed in the R1 district, so we thought you can either get the variance for the sign or you could rezone and make the use conforming rather than legal nonconforming, and they chose the route of rezoning which brings us here today. He offered to answer any questions.

Jackson Bogan asked if the petitioner or the petitioner’s representative wished to speak.

Tom Murtaugh, 20 N. 3rd Street, stated as you know, we have done a significant project at the fairgrounds and, also, have purchased the old YMCA building, and we did a significant renovation in that building. We are going to be increasing signage for both of those locations, so a sign on 18th Street and a sign on Teal Road, and when we submitted a request for that sign, it came up that the square footage of the sign allowance within that R1B zone was smaller than what we wanted to do. We didn’t know why this was zoned residential anyway, so with the help of staff, we decided to request a rezone of GB with a commitment. He offered to answer any questions.

Jackson Bogan asked if the commission members had any questions. There were none.

Jackson Bogan asked if any persons wished to speak in favor of this petition. There was no response. He asked if any persons wished to speak in opposition of this petition. There was no response.

Eric Burns stated this is a constructive moment. He said legally they do not have to recuse themselves. He stated they chose to which I think is smart. The Indiana Law is very clear about conflict of interest, and it is very simple. If you by your vote are going to make money if you are going to increase your financial wealth because of your vote, that is a crime. That is called conflict of interest by a public servant. You will want to avoid it. This is clearly not going to put any money in their pockets however it comes out, because it has nothing to do with them as individuals. They wouldn’t have to recuse; it is not even a close call. It is not a conflict of interest.

Jackson Bogan called for a vote on the commitment for Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY.

Ryan O’Gara collected the ballots.

The Area Plan Commission voted by ballot 15-Yes to 0-No for approval of the commitment for Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY.

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Jackson Bogan called for a vote on Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY.

Ryan O’Gara collected the ballots.

The Area Plan Commission voted by ballot 15-Yes to 0-No to recommend approval of Z-2843 BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY.

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V. ADMINISTRATIVE MATTERS

Jackson Bogan made an announcement for Don Lamb’s retirement open house on Friday, December 3, 2021 at 2:00 PM. You can honor him at that time. He has been with us for 39.5 years, and he will be missed.

VI. APPROVAL OF THE DECEMBER EXECUTIVE COMMITTEE AGENDA

None.

VII. APPROVAL OF THE NOVEMBER/DECEMBER AREA BOARD OF ZONING APPEALS AGENDA

Gary Schroeder moved that the following petitions be placed on the December 1, 2021 Area Board of Zoning Appeals Public Hearing Agenda:

BZA-2067 SCOTT AND LORI WILLIAMS; and
BZA-2068 KOH AND COURTNEY KNOX.

Greg Jones seconded, and the motion carried by unanimous voice vote.

Gary Schroeder moved that regarding the special exception BZA-2068 Koh and Courtney Knox, that this case will not adversely affect the Comprehensive Plan.

Greg Jones seconded, and the motion carried by unanimous voice vote.
VIII. DETERMINATION OF VARIANCES – Area Board of Zoning Appeals

Gary Schroeder moved that the following request for variance from the Unified Zoning Ordinance is not a request for use variance, prohibited from consideration by ordinance and statute:

**BZA-2067 SCOTT AND LORI WILLIAMS.**

Greg Jones seconded, and the motion carried by unanimous voice vote.

IX. DIRECTOR’S REPORT

David Hittle stated the report was passed out earlier this afternoon, and if anyone has any questions, he is happy to answer them. Mr. Hittle presented on the screen a photo of Don Lamb drawn by his daughter. Don has been with the APC for 39.5 years, and his depth of institutional knowledge is absolutely bottomless. When he walks into a room, he brings a credibility that is unassailable. Mr. Hittle wanted to give credit to Don on the record for everything he has done. He has maintained the status of the most tech savvy person in the department despite the fact he is not a spring chicken. He has done so much, and we will learn even more of what he has done after he’s gone. We just want to publicly acknowledge his fantastic service, and as Jackson noted, there will be an open house for Don from 2:00 PM-4:00 PM on December 3, 2021. That will also be Don’s last day.

Jackson Bogan stated publicly he would like to give Don Lamb a round of applause.

There was a brief pause to applaud Don Lamb.

Jackson Bogan thanked Don Lamb for all you do, and all that you have done.

X. CITIZEN’S COMMENTS AND GRIEVANCES

None.

XI. ADJOURMENT

Gary Schroeder moved to adjourn.

Meeting adjourned at 6:44 PM.

Respectfully Submitted,

Jennifer A. Ewen
Recording Secretary

Reviewed by,

David L. Hittle
Executive Director