

**THE AREA PLAN COMMISSION OF
ST. JOSEPH COUNTY, INDIANA**

MINUTES

Tuesday, February 21, 2017
3:30 p.m.

4th Floor, Council Chambers
County-City Building, South Bend, IN

MEMBERS PRESENT: Dan Brewer, Oliver Davis, John DeLee, Adam DeVon,
Martin Madigan, Matthew Peterson, John
Leszczynski, Jordan Richardson, Dr.
Jerry Thacker, Steve Vojtko

MEMBERS ABSENT: Debra Davis, Robert
Hawley, Elizabeth Maradik, John R. McNamara

ALSO PRESENT: Larry Magliozzi, Angela M.
Smith, David M. Stanton, Jr., Jennifer S.
Parcell, Staff; Mitch Heppenheimer,
Counsel

LARRY MAGLIOZZI: I would like to introduce David Stanton to you. He started today and will be our zoning planner. He is from Minneapolis, Minnesota.

PUBLIC HEARING - 3:30 P.M.

1. REZONINGS:

- A. A combined public hearing on a proposed ordinance of the University of Notre Dame DU LAC to zone from SF1 Single Family & Two Family District, MU Mixed Use District and MF1 Urban Corridor Multifamily District to MU Mixed Use District and seeking a Special Use to allow Single family residential, and seeking the following variance(s): 1) from the minimum lot width and frontage of 30' to 25' along the west side of Georgiana Avenue; 2) from the required 5' minimum front setback to 0' along Napoleon Blvd, St. Vincent Street and Howard Street in Blocks A, C and D; 3) from the required 15' minimum side residential bufferyard to 0'; 4) from the maximum building height of 40' and 3 stories to 4 stories and 64' for the buildings and 75' for the stairway access, except for those fronting on Georgiana; 5) from the maximum 8,000 square feet gross floor area for a single use to 8,400 square feet for retail and 13,000 square feet for a community center; 6) from the maximum 50,000 square feet gross floor area for a residential use to 500,000 square feet; 7) from the maximum allowed 1 projecting sign per 200' in width of front façade with a minimum 100' separation to up to 4 projecting signs of 50 square feet each with a minimum separation of 60'; 8) from the maximum allowed 5 square feet for suspended signs to 10 square feet; 9) from the required minimum 2 off-street parking spaces per dwelling unit to 0.8 spaces per dwelling unit and 10) from the Northeast Neighborhood Overlay Zoning District requirements for mixed-use and multi-family buildings to those consistent and compatible with those developed in Eddy Street Commons, Phase I, property located at a 10 acre tract along Eddy Street and the west side of Georgiana Street between Napoleon and Howard, City of South Bend - APC# 2808-16.

ANGELA SMITH: The petitioner is requesting a zone change from SF1 Single Family & Two Family District, MU Mixed Use District and MF1 Urban Corridor Multifamily District to MU Mixed Use District, seeking a Special Exception Use for Single Family Dwellings in the MU Mixed Use

District, and seeking 10 variances from the development standards. On site are vacant lots. To the north is a single family home zoned MF1 Urban Corridor Multifamily District and Eddy Street Commons - phase 1 zoned PUD Planned Unit Development. To the east are single family homes zoned PUD Planned Unit Development. To the south is the Robinson Learning Center, commercial uses, and vacant land zoned MU Mixed Use District. To the west are single family homes zoned SF2 Single Family & Two Family. The MU Mixed Use District is established to promote the development of the a dense urban village environment. The regulations are intended to encourage all the elements of a traditional urban village, including: storefront retail; professional offices; and, dwelling units located either in townhouse developments or in the upper stories of mixed-use buildings. The development standards in this district are designed to: encourage a pedestrian oriented design throughout the district; and, maintain an appropriate pedestrian scale, massing and relationship between buildings and structures within the district. The area being rezoned includes a 10 acre site comprised of 5 distinct blocks. Block A contains a mix of retail and flex space (residential or commercial) on the ground floor with multifamily residential located above for the portion of the building facing Napoleon Street and Eddy Street. The portion of the building facing St. Vincent is proposed to be multifamily residential. The proposed buildings are 4 stories tall at 64' in height plus the stairway access with subsurface and a courtyards located behind the building. Block B contains flex space (residential or commercial) on the ground floor fronting Eddy Street with multifamily residential located above. The portion of the building facing St. Vincent is proposed to be multifamily residential. The proposed building height along Eddy Street is 4 stories at 64' in height plus stairway access with garages and surface parking located behind the building. Two-story single family townhomes facing Georgiana on the east side of the block transition to the single family neighborhood to the east. Block C contains a 3 story multifamily residential building with subsurface parking and courtyards behind the building. Block D contains a 3 story multifamily residential with garages and surface parking located behind the building. Two-story single family townhomes facing Georgiana on the east side of the block transition to the single family neighborhood to the east. Block E, located on the southern portion of the site, contains a multifamily residential building with attached garages, the relocated Robinson Center, and surface parking. The townhomes along Georgiana Avenue and the proposed Robinson Center will comply with the Northeast Neighborhood Design Overlay requirements. The property to the north of the site was zoned to PUD in 2007 for the first phase of Eddy Street Commons. In 2011, the property to the east was rezoned to PUD to allow for the development of the Triangle Neighborhood. Eddy Street, Napoleon Street, St. Vincent Street, and Georgiana Street have 2 lanes with on-street parking. Howard Street has two lanes with a left turn lane as it approaches South Bend Avenue. The site will be served by municipal water and sewer. The City Engineer commented that the following are required prior to approval of any building permits: completion of utility verification form; approval of sidewalk, curb cut, lighting and overall site improvement; Board of Public Works approval of pavement marking and signage within the right-of-way; approval of a drainage plan; and verification of any waivers. The Department of Community Investment offers a favorable recommendation to the rezoning and variance requests. The proposed uses are consistent with the plan for the area and are compatible with surrounding land uses. The variances will allow the second phase to be developed with strong urban principles and be in keeping with the design of the first phase. The petitioner has offered the following written commitment: That portion of the Real Estate which abuts Georgiana Avenue shall be developed for residential or open space uses. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006) Policy H 1.1 Encourage residential developments to contain a mix of housing types, densities, price ranges, and amenities. The future land use plan. identified this area of medium density residential with a neighborhood commercial node at the intersection of Eddy Street and S.R. 23 (South Bend Avenue). The Amendment to the Northeast Neighborhood Development Area Plan (2011) identifies Phase II of Eddy Street commercial redevelopment area as a mixed-use, condominium, and row home development. Eddy Street has developed as a commercial hub and village corridor serving Notre Dame and the surrounding

residential area. Single family homes extend to the east and west. The most desirable use for the land is one that provides a transition from the higher intensity commercial uses in Eddy Street Phase I and the surrounding single family residential neighborhoods. By limiting the massing of the building facades adjacent to the east property line and using single family townhomes on the west, surrounding property values should not be adversely affected. It is responsible development and growth to allow the second phase of the Eddy Street Commons development to continue in a manner consistent with the first phase. This is a combined public hearing procedure, which includes a rezoning, a Special Exception Use, and 10 variances from the development standards. The Commission will forward the rezoning and the Special Exception Use to the Council with or without a recommendation and either approve or deny the variances. Staff has no additional comments. Based on information available prior to the public hearing, the staff recommends the rezoning petition and Special Exception Use be sent to the Common Council with favorable recommendations. The staff recommends that the height variance (variance #4) be limited to Blocks A and B. The staff recommends approval of all other variances as presented. Rezoning the property to MU Mixed Use will allow for the development of the second phase of Eddy Street Commons which will provide a mixed-use development that compliments and supports the existing development and surrounding neighborhood.

STEVE VOJTKO: Are the variances consistent with the current development that is already out there?

ANGELA SMITH: They are. Height variance #4 is to transition from the four story building at Eddy Street Phase One so that the two northern buildings would be the same height. Part of the reason for all of the variances is because Eddy Street Commons came as a PUD. Under our new PUD Ordinance that we adopted in 2015 all these uses are allowed in the mixed use district. They aren't seeking a PUD in this instance, so it is creating the variances.

JOHN DELEE: The 0.8 parking per unit, that isn't what the ordinance allows?

ANGELA SMITH: That is not the ordinance. The ordinance requires two per dwelling unit. The development that we've seen around Notre Dame, such as the Overlook and the other multi family density in the county, those have all come in at 0.8 parking spaces per dwelling unit. Because these are really geared toward student housing, they don't all necessarily have cars they do indicate that they will have some additional parking and plan to meet all the parking requirements for their retail portion and the office portion. Not knowing how that flex space is going, whether or not is going to go residential or commercial and some of the other things make the calculations comfortable.

JOHN DELEE: So it is not unusual for this kind of development?

ANGELA SMITH: It is not unusual for a parking variance throughout the City.

DAN BREWER: Did you articulate the staff report in regards to the special use?

ANGELA SMITH: The special use is for the single family residential along Georgianna. They don't know yet if they are going to be attached or detached. If they are attached and you have more than three units together it is considered a multi-family dwelling, which is permitted under the mixed use district. A special exception is to allow them the opportunity to adjust to market demands if they are detached.

DAN BREWER: My question though is did you articulate what the staff recommendation was?

ANGELA SMITH: Along with the zoning, it was to send with a favorable recommendation.

DOUG KIRBY: I am with Kite Realty. Offices located at 30 S. Meridian, Indianapolis. I am excited to be here, because what that means is that we are moving beyond Phase I and building off the success of Phase I and expanding into Phase II of Eddy Street Commons, which was ultimately the plan originally. It just took time to get Phase I fully built out and successful in what it is today. We are obviously working with Notre Dame as well as the City on this project. As Angela said blocks A and B, which are these up here (pointing to the powerpoint) on the northern part are meant to be market rate units that face on Eddy Street over top of flex units. The flex unit that we are looking at can be used as a residential unit, but originally we planned on hopefully having these as uses such as small single offices, galleries, service sales offices, things of that nature. Not traditional retail that you see on the ground floor of Phase I. Above that will be residential and as Angela said, we are looking at four story buildings above those units facing Eddy Street as well as above the retail use on Napoleon. As we move farther down south on C and D and Block E, we are stepping those down to three story units, 40 foot height. Those are more geared towards the graduate units, so they will be smaller units probably single bedroom units, maybe some lofts mixed in there. Really want to see what the market will bear on that, but that is ultimately the goal. Block A and B will be market rate maybe multi bedroom, two or three bedroom even as we move farther south and step down and transition farther south we would be looking at graduate units. As Angela talked quite a bit about those units facing Georgianna those are looking at single family townhomes. Ultimately the market will decide what we put there, but we have built in to the request of flexibility so we could build detached single family units. That is why you see a request to go to 25 foot wide lots and the single family use. If the market bears going with attached units, we want the flexibility to do that as well. That is why you see the request. These also provide the transition from the triangle development across Georgianna going into the rest of Eddy Phase II. We look at that as really that transition unit from those single family units there into the more dense urban along Eddy Street. We have also provided for a small pocket park here at the corner of St. Vincent and Georgianna. That can be used by the neighborhood. We worked with staff of the Area Plan Commission and the City and we appreciate their time and efforts to get this application and petition to where it is.

GREG HAKANEN: I am the Director of the Northeast Neighborhood Redevelopment for the University of Notre Dame. Offices located at 415 Main Building, Notre Dame, Indiana. I am here to confirm Notre Dame owns and has assembled all the land incorporated into this request with. Kite Realty Group, who has been the developer of Phase I. We are thrilled with the way Phase I has turned out and we have engaged Kite Realty Group to be the developer for Phase II. We have worked closely with them on the development of the plan that you see. I think it is fair to say that the plan that you see might be quite different than what a profit driven developer left to its own devices might do. Our goal is to create a vibrant neighborhood with people living there year round in support of the stores and just a nice community feel. We are especially pleased that Kite took the time to reach out to neighborhood residents, there were public meetings on December 1st and 13th. Residents of the neighborhood were invited. We learned some things along the way about the original plan that was proposed. Kite has made material changes to the plan in response to concerns that we heard. I believe it is a better plan. We are pleased with the process. It is consistent with what was done with Eddy Street Phase I. We think it represents a good model for development. As a result of all the above, the University of Notre Dame endorses this plan.

JOHN DELEE: What is the shielding through the residential neighborhood to the west?

DOUG KIRBY: So this would be the back side of the apartment complex (pointing to the powerpoint). We have some green area amongst the elbows, if you will, of those buildings and then we transition down and we have room for buffering and landscaping buffering as well. We are proposing to improve those two allies that run through there to allow access to the parking garage underneath that building.

IN FAVOR

BILL STENZ: I reside at 1020 E. Colfax, South Bend. I am the president of the Northeast Neighborhood Council of South Bend. At our January 9th meeting after multiple meetings with Kite and waiting anxiously for Phase II to be proposed, we have unanimously support the project as presented.

MO MILLER: I reside at 1227 Quigley Place, South Bend. I am resident of the Triangle Subdivision. I am also a member of the Triangle Homeowners Association (HOA). On behalf of myself as a resident and Homeowners Association, I attended the two public meetings. The Board of the Triangle had an opportunity to discuss some issues with Kite and we are very pleased that they heard us and they did make changes to the original plan. We are happy with the outcome that you see here today and on behalf of the Triangle HOA Board we support this project and look forward to its completion.

MARGUERETE TAYLOR: I reside at 714 E. Corby Boulevard, South Bend. I am a lifelong resident of the Northeast Neighborhood. Way back in 1995 or 1996, the Northeast Council commissioned a company out of Indianapolis to study Eddy Street and they concluded that Eddy Street didn't work for anyone. There was no tree lawn. It was a mixture of businesses and private home. It just didn't work. They did a number of charettes around the neighborhood to figure out what could we do with Eddy Street. This is what we have done with Eddy Street. It is great. I said I think I am in a really unique place because I am a member of the (NNRO) Northeast Neighborhood Rivitalization Organization, I am a member of the Northeast Neighborhood Council, I sit on the board of South Bend Heritage so I get to see a lot of stuff. Every organization including the neighbors that are around, most of them support this activity and we ask that you support this also.

ROB BARTTLES: I am with Martin's Supermarkets. Offices located 760 Cottage Street, South Bend. Just appreciate the flexibility and responsiveness that the folks have gone into making this happen. Support, prosperity and development, I think this is an example of work well done and just look forward to South Bend's growth and the opportunity it affords.

REMONSTRANCE

S.J. SZABO: I am with EN/SYN Design Studio with offices located at 1355 Mishawaka Avenue, South Bend. Basically, it comes down to this, Eddy Street Commons started out in the public eye as a quaint little village for Notre Dame. Before we knew it, it blew up into four or five blocks of downtown Indianapolis, which is doing nothing but draining the resources of our own downtown where this kind of thing belongs and setting up a competitive hub that our real downtown can't hope to compete with, especially with the money folks at Notre Dame. I am glad Notre Dame is getting themselves a real urban downtown of their own, but it is at our expense. I think this whole thing is a huge mistake that in later years that people would look back on this and say what were they thinking.

JESSICA PAYNE: I reside at 1119 N. Francis Street, South Bend. Approximately a block from the current Eddy Street Commons. I have been against much of what has gone on in that neighborhood since Eddy Street Commons started. As the other gentleman said, it was pitched to us in the beginning as this wonderful quaint little community area that would have coffee shops and local stores and maybe one or two floors of apartments. Again, as we know it turned into something quite different than they had said. Now I live in a home that I absolutely love, had no intention of ever moving from, we have been there for over 20 years. I no longer can sleep with my bedroom windows open on a beautiful spring day like we have had lately because all I do even with windows closed is listen to hooten and hollering from the kids walking to and from the bar. They all park on my street. When I left this afternoon there were eighteen cars parked on my one block, not a single one lives on my street. That is fine, I understand that, they live

or work nearby, they park there. There are a number of students that park their cars on our street. They will stay put there for weeks on end, they will never move. They just park and go about their business going to class. If you noticed in the pictures that they were showing of Eddy Street where there are no houses anymore, you might have noticed there were cars parked from one end to the other. I was glad that you questioned the 0.8 per residents parking because not only do I question the 0.8 per residents, I would question the two quite honestly. I would like to, at the very least, see a 0.8 per bedroom. We are talking about student rentals, we are talking about residences that will have multiple kids living in one apartment which has the great potential for there being multiple cars. I speak from knowledge that these kids have cars here that they park their cars in the neighborhood. I have no doubt that when this is finished, my neighborhood will be nothing more than a parking lot. I don't live in Chicago because I didn't want to live in that kind of environment. I enjoy all that South Bend has to offer. We enjoy going downtown to the theater and Art Beat and things at the Century Center. I live in South Bend because I also enjoy the quiet serenity that it gives me. The neighborhood that it gives me. I noticed how well the Triangle speaks of how Kite has listened to them and had meetings for them. The only reason I found out about one of the meeting was because my sister told me. People in our neighborhood, the established neighborhood, the one that was there before any of this existed, we are generally not notified of anything. There is no listserve for us. People are not putting letters in our mailboxes to let us know about things. They haven't asked our opinion as to how this could possibly changed a little, scaled down a little, some buffers created for us. The two front areas, again where we were sitting could not see the lettering, but I am seeing now that it is A and C. All those homes next to that are all my neighbors. Tammy lives there. She lives in a quaint little cottagey one-story house that is going to be right next to that retail space. Deb also, virtually every house on that side of the street is a quaint small one-story cottagey house almost the entire way down. I think there is three two story house on that side over the entire span of that entire block. I didn't hear them talking about any kind of lowering the heights leading into that neighborhood or buffering that neighborhood because we are really not thought of as being that important. When it comes down to it, it is your obligation to make sure that the existing neighbors there have the pleasant use of their homes as much as anyone else. If things go according to what they have required, which is ten times the floor space for apartments, ten times they are asking for. If I asked for ten times the amount of money for someone to buy my house, they would say I was insane. But for some reason to ask for ten times the residential space doesn't seem to tell anyone that maybe there is something a little wrong with this plan. To require far less parking then is needed doesn't seem to bother anyone because it is not in front of their house that all these cars are going to be parked. I do hope that as you look at this plan in its entirety that you look at the neighborhood in its entirety and think about all the people that live there and have lived there for decades and what they might like to see.

REBUTTAL

DOUG KIRBY: Just a couple of things to point out or bring up. Parking is based on standards that have been pursued and approved elsewhere in the county, as well as our experience in Phase I. We have a 1,200 space parking garage in Phase I that is no where near full with the units we have there. Our experience with this population is that the 0.8 is more in line with what we need. In fact, it is probably even less. We are comfortable with going to that level. As far as the notices, the Northwest Neighborhood Planning Commission was aware of it and has actually spoken in support. So I think the notices should have been more than adequate per standards there. Again, like I mentioned before the height and buffering, there is a buffer area behind that adjacent to the alley as well as on the other side of the alley to buffer Blocks A and C as well.

STEVE VOJTKO: Could you comment on the last persons statement about the ten times space required? I guess I really didn't understand that part.

DOUG KIRBY: I think what she is referring to is that in the mixed use zoning it allows up to 50,000 square foot of residential. We are asking for 500,000 square feet. It is a ten acre site. I think it is more than justified to ask for that.

DAN BREWER: I assume notice per the ordinance was adequately done here?

ANGELA SMITH: Correct. We mailed the public hearing notifications to everyone within 300 feet of the property to the address that is on your tax record. Wherever your tax bill goes to is where the notifications are sent.

OLIVER DAVIS: Do you know if that would include the address of Ms. Payne?

JESSICA PAYNE: I received a letter about this meeting. I am talking about the community meetings.

DAN BREWER: Oh I see. We just want to assure proper notifications were sent.

OLIVER DAVIS: Personally, I would like to say I understand where the concern came that Eddy Street has blown up to a bigger situation, but truthfully speaking it is not just something that has benefited the University of Notre Dame, it has benefited the City of South Bend as well. A lot of us eat over there, go there many times, it has really helped to build up the east side of that area. I see the growth that they have been able to bring to us and I am glad to be able to support this.

JOHN DELEE: I have a friend who lives a block away from Phase I and there is certainly a parking problem in front of their house, but he told me it was no worse than it was before the development. So I believe the parking problem was there before and this won't make it any worse I don't think.

OLIVER DAVIS: I see we have representatives from Notre Dame here and I would just encourage them to continue with the parking situation as more traffic comes into the area. More traffic comes to the City of South Bend is a good thing. We just have to continue to work on how we develop that and how we continue to make the business more comfortable and how we make our neighborhood. I think we need to honor what has been stated by neighbors who live there about parking issues. One of the businesses that I am around a lot, we have students and having students in our area is something we need to pride ourselves on. Students bring a lot of issues with that too. I know with the Notre Dame officials here, I challenge them to continue to monitor that and to address our neighbors concerns and the issues that she is having to look at that and I would really ask them to do that.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, a proposed ordinance of University of Notre Dame DU LAC to zone from SF1 Single Family & Two Family District, MU Mixed Use District and MF1 Urban Corridor Multifamily District to MU Mixed Use District, property located at a 10 acre tract along Eddy Street and the west side of Georgiana Street between Napoleon and Howard, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Rezoning the property to MU Mixed Use will allow for the development of the second phase of Eddy Street Commons which will provide a mixed-use development that compliments and supports the existing

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, a Special Exception Use for single family residential property, located at a 10-acre tract along Eddy Street and the west side of Georgiana Street between Napoleon and Howard, City of South Bend, was sent to the Common Council of the City of South Bend with a FAVORABLE recommendation, subject to the rezoning being approved by the Common Council of the City of South Bend.

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, the variance(s) 1) from the minimum lot width and frontage of 30' to 25' along the west side of Georgiana Avenue; 2) from the required 5' minimum front setback to 0' along Napoleon Blvd, St. Vincent Street and Howard Street in Blocks A, C and D; 3) from the required 15' minimum side residential bufferyard to 0'; 4) from the maximum building height of 40' and 3 stories to 4 stories and 64' for the buildings and 75' for the stairway access for Block A and Block B, except for those fronting on Georgiana; 5) from the maximum 8,000 square feet gross floor area for a single use to 8,400 square feet for retail and 13,000 square feet for a community center; 6) from the maximum 50,000 square feet gross floor area for a residential use to 500,000 square feet; 7) from the maximum allowed 1 projecting sign per 200' in width of front façade with a minimum 100' separation to up to 4 projecting signs of 50 square feet each with a minimum separation of 60'; 8) from the maximum allowed 5 square feet for suspended signs to 10 square feet; 9) from the required minimum 2 off-street parking spaces per dwelling unit to 0.8 spaces per dwelling unit and 10) from the Northeast Neighborhood Overlay Zoning District requirements for mixed-use and multi-family buildings to those consistent and compatible with those developed in Eddy Street Commons, Phase I property located at a 10 acre tract along Eddy Street and the west side of Georgiana Street between Napoleon and Howard, City of South Bend, were approved subject to the rezoning being approved by the Common Council of the City of South Bend.

- B. A combined public hearing on a proposed ordinance of Arthur & Mary Hansen to zone from LB Local Business District to CB Community Business District and seeking a Special Use to allow a Kennel (with outdoor runs), and seeking the following variance(s): 1) from the required 23 minimum off-street parking spaces to 7; and 2) from the required perimeter landscaping to none, property located at 3566 Douglas Road, City of South Bend - APC# 2809-16.

DAN BREWER: We have a request to table this petition indefinitely.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, a proposed ordinance of Arthur & Mary Hansen to zone from LB Local Business District to CB Community Business District, property located at 3566 Douglas Road, City of South Bend, is TABLED INDEFINITELY per the request of the property owner.

2. TEXT AMENDMENTS:

- A. A proposed ordinance of the Common Council of the City of South Bend, Indiana, amending Chapter 21, Article 3, Section 21-03 of the South Bend Municipal Code by adding a new

Sub-Part-21-03.06(b)(4)(C) to increase the maximum building height permitted in CBD Districts located between the St. Joseph River and the East Race Waterway, City of South Bend - APC# 2812-17

ANGELA SMITH: The petitioner is requesting a text amendment, amending Chapter 21, Article 3 of the South Bend Municipal Code to increase the allowable height of buildings within the Central Business District on what is commonly known as the Island. The proposed amendment adds a new subsection that increases the maximum height for buildings located between the St. Joseph River and East Race waterway to 150', but maintains a maximum height of 60', or 5-stories, for properties zoned CBD that are east of the East Race Waterway. The maximum height allowed for CBD properties west of the river is unchanged. The staff continues to be concerned about the maximum allowable height of buildings zoned CBD east of the St. Joseph River. The Staff's position on this remains unchanged from two previous requests to substantially increase the existing allowable maximum height from 60' – the first as a part of the Commerce Center PUD rezoning request and the second as a height variance request. The Staff's position is based on the following actions: the adoption in 2004 of the zoning ordinance that established distinct height differences between the east and west sides of the river; the adoption of the East Bank Village Plan in 2008, and; the approval of two height variances by the Area Board of Zoning; and the lack of any new planning process seeking consensus on changes to the above mentioned plans. Adoption of the 2004 Zoning Ordinance – The adoption of the ordinance was a conscience decision to establish a different development character for the east bank area. Prior to 2004, the majority of the east bank was zoned with a maximum allowable height of 150', the same as the west bank. Contributing factors in establishing two maximum height standards was the height of the Commerce Center Building (60'), the lower density of the east bank area in general and the desire to maximize the use of the existing infrastructure, such as the parking garages, in the core downtown area. On a broad policy level basis, it is our opinion that those factors are still valid today. East Bank Village Plan – The East Bank Village Master Plan, Phase 1, adopted in 2008, was an amendment to City Plan, The Comprehensive Plan. The project narrative stated that: “The East Race area would greatly benefit from having its own unique identity and should be re-named The East Bank Village. This branding of the neighborhood has exciting potential and should strengthen its identity as being independent of the Central Business District.” The combination of the preferred modeling concept and sample illustrations clearly indicate, in our opinion, that a low-density concept was being championed by the 10 stakeholder groups that participated in the planning process. The plan emphasized the use of low to mid-rise buildings. This was a reaffirmation of the 60' height limit for the CBD District east of the St. Joseph River. Height Adjustments – Two variances were approved by the ABZA, one in 2013 for the Cascade project to 76' and one in 2015 for East Bank Flats (Sycamore and Colfax) for 70'. The mechanical portions of the buildings were permitted to extend up to 90' and 78' respectively, but only to the extent necessary and shown on the plans. Both of these projects are located on the Island. These projects were granted approvals to exceed the 60' maximum height limit, but well below the proposed 150' maximum height limit. The threshold for mid-rise buildings is generally considered to be 75' Based on information available prior to the public hearing, the staff recommends that the petition be sent to the Common Council with an unfavorable recommendation. The proposed maximum height limit change for the CBD District east of the St. Joseph River is contrary to the place-building concepts adopted by the Zoning Ordinance, the East Bank Plan and the height adjustments approved by the Area Board of zoning Appeals. The appropriate and responsible path in seeking a change to the height requirements is to undertake a well-established public process to amend the East Bank Plan, and to let that suggest the best course of action.

You received in your packet today letters in favor and in opposition to this petition. We have received, prior to 3:00 p.m. today, thirteen letters of support and seven letters in opposition and two of which have been asked to be read into the record. The first one is:

“Area Plan Commission
St. Joseph County
County-City Building
South Bend, IN 46601 February 20, 2017
Att: Larry Maggliozi, Angela Smith

Re: TEXT AMENDMENT: Ordinance of Common Council, City of South Bend APC #2812-17

Dear Larry and Angela,

I respectfully request this letter of remonstrance be read into the record in the above referenced matter, which is being considered this afternoon.

I am particularly disturbed regarding the above text amendment which, in my opinion, is an attempt at short circuiting prior community planning and process.

I have invested and continue to invest heavily in the East Bank Village neighborhood and have done so with the knowledge and intent of creating developments which maintain and reflect that vision. That plan was created, fully vetted and adopted by this community less than a decade ago.

There are a multitude of planning issues that I am concerned about as they relate to a previous attempt at creating a PUD by Matthews LLC, although it appears that the single issue of height is the item that is being focused on.

The excessive height of the building being proposed, is in direct contrast with the vision created by the East Bank Village plan of 2008. That vision was of a low to mid density scale, thus the intentional reference to a “Village”.

To my knowledge, during previous planning efforts, there were no previous discussions or considerations to separate the East Bank portion of the CBD as this text amendment is prescribing. Even if one were to agree and accept the change in height, the drastic step down from 150 feet to 60 feet in height should also be addressed as professional planning would dictate.

I appreciate your consideration of my concerns, and your NO vote in response to the petitioners request.

Sincerely,

Frank Perri
Earth Design Real Estate LLC
3617 McKinley Avenue
South Bend, Indiana 46624”

DAN BREWER: Angela, before you precede I have a question for Mr. Heppenheimer. Does a citizen get his written remonstrance read into the record if they are not going to be here to take questions just by asking? Are we going to have to read in all of the e-mails as well?

MITCH HEPPEHEIMER: That is a path that is concerning.

DAN BREWER: Are these letters and e-mails going to be part of the public record?

ANGELA SMITH: Yes. They are part of the packet, if you wish for me not to continue I will not.

DAN BREWER: Let's not go through them.

MITCH HEPPENHEIMER: Can we give the name of the other one who requested it be read into the record?

ANGELA SMITH: The other individual that asked for their letter be read into the record was Becky Reibold who resides at 714 E. Jefferson Boulevard, South Bend, IN 46617.

PART 2

JORDAN RICHARDSON: In the analysis portion of your report? Can you give a little bit more color to what you said was the appropriate and responsible path in seeking a change?

ANGELA SMITH: Sure. Immediately following the PUD request, we sat staff down and outlined a process by which they could amend the East Bank Village Plan. We actually set up a timeline that would have brought it to the Plan Commission in March following the full planning process, with the ordinance changed by April. The planning process typically uses one, two or multiple public meetings where they invite stakeholders and surrounding neighborhoods to weigh in on that thought. Our position is the process would be used essentially to determine the height requirement.

DAN BREWER: So it is a lengthier process?

ANGELA SMITH: It is. It would involve a couple of public meetings.

GAVIN FERLIC: I reside at 1109 Dewey Avenue, South Bend. First, thank you to APC for considering this proposal I'm joined by my fellow co-sponsors on the ordinance, Oliver Davis and Tim Scott. They will give their address when they address the board. Wanted to just address the Text Amendment that allows 150 feet on the island within our Central Business District (CBD). We decided to pursue this route as a response to community demand, as a response from demand from the Howard Park Neighborhood Association, and also neighbors living in close proximity has requested this height variance. Therefore, we wanted to follow through with those neighbors requests. The island is currently part of the CBD. This would essentially make an extension of the west side of the river, of what is downtown, and allow for an increase height in development. Regarding the Comprehensive Plan, increase in height, in my opinion, is inline with the vast majority of the Comprehensive Plan and allows the area to achieve, as it wants to achieve, density, mixed use development, potential amenities, which could include grocery store, pharmacy, restaurants, apartments and condos. These elements of the plan have not been able to develop on that island to this point without going over the 60 feet allowed in the ordinance. So, again to achieve the comprehensive plan, to achieve the mixed use development, to achieve amenities like a grocery store or pharmacy we think it is prudent to increase the allowable number of feet to 150 feet so we can carry out the vision of the plan, have some great restaurants, mixed use development, have density, have people living downtown with condominiums and apartments. We ask for your favorable recommendation today.

OLIVER DAVIS: I reside at 1801 Nash Street, South Bend. As you can remember, just last month we put together a compromise. There was a movement to have the building at twelve stories and then there were others that said the height was too great. So, since September all the way through to now we have had multiple meetings to discuss this matter back. Back Mr. Richardson's issue, we have had a lot of meetings as well as Area Plan meetings to City Council meetings to meetings to discuss the whole concept of height. It has been well publicized throughout our media and everything else. I should say that the day after our compromise that the City Council came up with that we all were pleased to work

along with Mayor Budigudge, his team, the City Council to come into agreement with. The next day I received a message from Anglea Smith that I have shared with our counsel and it says that you should have just done a text amendment to change the height, State Law will pretty much prohibit the ABZA from approving this. The case law will open them for huge lawsuits if they approve it, which puts them in a bad position and waste another 30 days of process. If this is the way the Council wanted to go, it would have been better to go as a text amendment. I was concerned that this came from our leadership here that did not advise us. We would not have spent our time doing the compromise, even though I did appreciate the process, it did allow the Council and administration to work together. We did have from our leadership here to send us this. I will put it for the record. For the standpoint that we count on them to advise us to do that. We would not have wasted our taxpayer's time to do that compromise even if you move forward last year with a text amendment. This is about a text amendment. We have been serving together, Mr. Ferlic came a few months ago to ask for a Text Amendment on behalf of the Council and we approved that. Mrs. Broden came earlier in August and asked for a Text Amendment and we approved that. We do have as a body here, Area Plan, as a body of the Council to make changes to the text amendment. I would like us to focus on that part. Is that we have the right and you have the right to make changes to Text Amendment. Whether it is 75 feet or whatever. The issue is here is the right to have a text amendment change so we can have community support, when a leader or official sends you this direction after a meeting a meeting, we were like, "woo," we would have gone this direction before and presented this to you earlier and so we lead off with this issue. To have the administration come back now and say we disagree with this and we should have all these meetings and everything else after they advised us then, it is a concern. We want to make sure we have harmony with our administration, with everyone here as we move forward and we can count on our recommendations. We do not want our recommendations coming from our Planning Commission after we have made a decision to your body and to the Council. That is not prudent. We want them to come before so we can have the debate and handle those issues and we can move forward. This is a text amendment that we think will bring harmony to this long standing situation and we are looking forward to your support.

TIM SCOTT: I reside at 711 Forest Avenue, South Bend. I am President of the Common Council. I cannot follow up with anything better than what was just presented to you from my Council colleagues. I appreciate that, I will make it brief. The only thing else I would like to say is we have heard from plenty of citizens within this area, within the first district that would like to see this done. We are in collaboration and also one of our presenters will be from the City, Tim Corcoran from Economic Development. We are in agreement with them on this, working as a team. I want to apologize right now, I have to pick my wife up at 4:30 so I will not be able to stay for the whole thing. She is at the Airport. You know how they can be upset. Forgive me for leaving early.

TIM CORCORIN: I am the Director of Planning for the City of South Bend. Offices located on the 14th floor of the County City Building.

DAN BREWER: Mr. Corcoran, excuse me, are you one of the petitioners here representing the petitioner or would it be more appropriate for you to speak in the time we solicit.

TIM CORCORIN: We are working together to do this.

DAN BREWER: Ok.

TIM CORCORAN: I am here to reiterate much of what has just been said. We have worked continuously with Council and the Area Plan Commission over the last few months to try to come to an agreement that has taken us to this point. A developer agreement has been signed. This shows the support the city has put forward for project in the island site. This has passed through the Board of Works. We are ready to start building and this is the last sort of point in which we need your support to

help this process go through. I just wanted to reiterate that the City does support this and that we feel that it is the right move in order to promote development in this area.

STEVE VOJTKO: Were any of the groups that you talked to, were any of them involved in the past master planning?

GAVIN FERLIC: I can't speak for certain, but I am almost positive Howard Park Neighborhood Association and members involved in that organization participated in the past planning process. I was at some of those meetings ten years ago, I forget how long ago. I could not say for absolute sure, but I am 99.9 percent sure that yes, members of the Howard Park Neighborhood Association participated in those meetings.

STEVE VOJTKO: That would have been the group that put the original master plan together then?

GAVIN FERLIC: I think it was members of that neighborhood association participated in the process, I believe the City put together the Master Plan. I would also like to apologize, I need to leave at 4:55, so if for some reason it goes longer...

IN FAVOR

MARY BUNDY: I reside at 318 Francis Street, South Bend. I am the President of the Howard Park Neighborhood Association. I am here representing the residents. I think I have spoken in front of this particular board in the past. There have been a number of them. I do not remember so excuse me. The Howard Park Neighborhood has an interesting mix of residents. It has been an industrial area as you know the TRANSPO site. Since the building is gone the land has been sold, we are waiting for it to be developed. So many of the people that live in this neighborhood and there really are not that many. I think it is under 200. I have only had two people at neighborhood meetings say they were actually at those 2008 meetings. They were excited for anything to happen in the neighborhood, they would have welcomed any development. There are not that many neighbors who are actually there. I investigated to find out who was there in 2008. Who are those voices that are representing me now, my neighborhood? Who are they? There is not a sign in sheet. We do not know who those people were. We have to take their word for it. Yes, there was a document. Yes supposedly they included actual residents of the neighborhood as stakeholders and business partners and other interested developers. The actual residents, the Howard Park Neighborhood Association. I just recently was re-elected for my fourth term. I think it is so important for a neighborhood to have a voice, for their residents, for the people who live there. My house, I sit and I look at the brickyard across the street. Which is not a brickyard anymore, It is going to be developed. But we live there and that Howard Park Residents, we have approximately 30 members in our Neighborhood Association. We have 215 members on Facebook, we do not count them. Why? We love having interest, we love having community, but they don't live in the neighborhood. Speaking for residents who live in the neighborhood, I can strongly say, we want this project. We have been waiting for something to happen like this to happen in the neighborhood. We would have welcomed it at twelve feet. The neighbors who live there, who are going to look at the building, who are going to walk past the building, interact with the building, interact with the new residents, visit the grocery store. We would have welcomed twelve feet. Now it is at nine. This Text Amendment which was developed because of the strong support of the neighborhood and other interested people to have this happen. It has been stonewalled and it has been blocked by something that was developed in 2004. In 2004, think about it. Think about if you had kids going to Kindergarden in 2004, they would be in College. People talk about 2004 – 2008; well you know it was just a few years ago. Well, a lot has changed. The entire neighborhood has changed. The vibrancy is calling to people. I have people visiting from Dallas, from Portland and I take them walking through these areas that you know my son said, well mom this looks desolate. Well yeah, let me tell you what is going to happen

here. And when I tell him he said “uh, I could see that. I could see you living here”. So with that in mind the Area Plan staff is doing their job, they have certain parameters they have to look at and they follow that. That is their job. But you can look at the bigger picture, you can decide that yes, those stickler points, those plans that we have outgrown, you can decide to help the City of South Bend move forward and especially in my neighborhood. I look forward to walking to a grocery store. I hope you can send this on with a favorable recommendation.

JESSIE DAVIS: My address is P.O. 10205, South Bend. We have had many meetings. I have attended many Council meetings where they have discussed this. Again, social media is a very good tool now a days. You can get so many people’s opinions. I run a Community Activist page that has well over 1,000 members. Many of which reside in this neighborhood. There has been a lot of talk on there for and against it, probably more for it than against it. Change is not always something that everyone might like. I live in Mishawaka along the river by the 100 Center when they came in with the new townhomes next to the 100 Center, they were taking away my view of the river on a street and in a house that I have lived in my entire life, for 52 years. I didn’t like the idea at first, but it came, it was built, it has bettered our neighborhood. You get some thing like this, I have been to all of the City Council meetings except maybe three in the last six years and all I have heard is we want development, we want more downtown, we want a grocery store in particular, we want another pharmacy. Remember when Osco’s was downtown. There is an opportunity for that now and we have a handful of people that are speaking against it. I understand there are tax abatements involved. I don’t like tax abatements. In this case I think it is needed. We have about five million dollars coming from down state that is going to go into this project. If this project fails that five million dollars may not come to South Bend or our area. There is a lot of factors here that are playing a role and to have this stuck all of a sudden on this height issue is kind of crazy. We have had so many meetings, there have been so many people talking about it. I think this text amendment should pass and it should go to the Council and let this project move forward. We need to move along. We didn’t like smart streets either, but guess what, they are here. They said for the better of our community. I think this is for the better of our community. People need that grocery store, people need that pharmacy and we need density here so let’s pass this.

JACK JACOBS: I reside at 223 E. Colfax Avenue. That’s across Sycamore Street from where the proposed building is kind of forcing this increase in height limit. I just want to say that I am incredibly excited for this development because it is necessary for my lifestyle which I believe speaks to a stereotype. I am a token millennial, recent college graduate, working professionally downtown with too much debt to buy a car, and thus really depends on density. I need to walk to buy food. I currently buy from Purple Porch. It is excellent, but they don’t sell medication. The pharmacy would sell medication. Whatever can be done quickly to bring back into the community will not only benefit privileged individuals like myself but also people throughout the northeast side, throughout South Bend really, who have limited access to cars to go out to Mishawaka or to go down Portage Avenue to get medicine. I just want to highlight the fact that this is really important for very crucial basic human needs.

ROB BARTTLES: I am with Martin’s Supermarket with offices located at 760 Cotter Street, South Bend. A few minutes ago we saw a Notre Dame proposal and you all had the flexibility, judgement and wisdom to move forward prosperity. We are talking about an area that is in a central business district. Frankly, my father and I have spoken to three generations of Mayor’s about how to improve our downtown. How to bring business to downtown. How to have the right level of stewardship, prosperity and development in our downtown area. It is difficult to get a grocery store located in downtowns because the redevelopment costs are so much higher than simple development areas in the first place. I have seen an extraordinary system of complexity built around height restrictions here. Frankly had the business community been aware of it back then we might have paid a little more attention to what seemed

to be an open and helpful plan that was built around flexibility and the ability to get business developed and invested downtown. That is what I am about. I have never received as many letters and customer comments about a development that we have done than this one. The vast majority on a 10-1 basis, I think it is more than that, have been favorable. Same thing with business encouragement, folks do not understand a height restriction that seems to be such a block to what is going on downtown. Man on the street, it is an anecdote, but the conversations that I have had is why in the world is height such a problem? I can answer that because somebody said so in a plan. I think you as a body have the ability to be wise and give us a similar kind of flexibility that develops property in the same way that I heard just a few minutes ago with Notre Dame. I have a lot of respect for planning processes but when they are an impediment and a barrier and a burden, then they need to be looked at. You all have the opportunity to say yes and I would encourage you to do so.

RICH CARLTON: I reside at 14322 Southhold Drive. I am an operator of a couple of South Bend businesses as well as the past chair of the Chamber of Commerce. Obviously we are all excited about the vibrancy of the business community right now and the momentum that we have and you have to have processes to be able to follow that. As someone who employs a lot of individuals like the young man who spoke earlier who want to live in our downtown, the common thing that we hear is the missing grocery store/pharmacy store. That goes back 15 – 20 years as we seen the continue of development opportunities like, it was mentioned, between around campus all the way into downtown and the density that we are beginning to see seems to be the missing link. Obviously you elevate as a business person, All of you are in that role, an opportunity when it presents itself. In 2004 and 2008 maybe this opportunity wasn't there to be presented and so now it was and it was unique. Looking from the outside in it seems as though there had been multiple opportunities where public input could come about. It has been good to see what I thought was a compromise that was made with the City and the developers and to hear that the local neighbors that are going to be dealing with it the most are for it. Seems to be the momentum is there and the appropriate way. I would ask that that momentum is respected and considered and at the same time I don't think we should minimize the fact that this is an opportunity with Martin's and I don't say that lightly. It is not like it is a big box out of town store where the only benefit we get is a grocery store downtown that is going to create some additional very low paying jobs. Martin's is who in our community who employs our kids. Martin's is who is involved in our community. Martin's is who has their accounting staff, marketing staff and their IT staff here. What's good for Martin's and their continued growth is good for our downtown. It is going to be good for our community. If it were anyone else, I am not sure there would be that level of excitement that I have but the combination between a local community partner who has invested in this and the work that has been done to get to a compromise that our community is saying they want to need, hopefully we will get a favorable recommendation from this body.

CARLA MYERS: I reside at 1322 Honan Drive, South Bend. I am a local real estate broker and past president of the Board of Realtors. My husband and I own a business that has been downtown for many many years. As much as I love my neighborhood, I do not plan to retire there. My dream is to live downtown South Bend. I want to walk to the grocery. I want to walk to the pharmacy. I want to walk across the river to the restaurants that I love. When this plan was made I don't believe that we have the restaurants that we have here today. The vitality was not present and I would encourage you to help me help people. I hear from that young man many times every week, I want to live downtown, I can't find a place to live downtown. I think you can help that situation and make our community more vital. I would like to see you support this.

MARY WILCOME: I reside at 128 S. Scott Street, South Bend. I have been a resident of the downtown area for about three years now and a life long resident of St. Joseph County. Went to St. Mary's College and chose to stay in the area. Was employed in the downtown area for several years. I

have been waiting for a grocery store downtown. I think this is a really great opportunity and I am almost a little embarrassed to tell my friends who have gone to Chicago or Indianapolis that we are having to even fight this battle. I would show a favorable recommendation for this. I hope you guys do to.

REMONSTRANCE

S.J. SZABO: I am with EN/SYN Design Studio with offices located at 1355 Mishawaka Avenue, South Bend. I take this opportunity to address you regarding the Matthews Monster, playing by the rules, and the need to uphold the integrity of properly crafted area plans as the proven means to ensure an optimal and orderly development of the urban environment. You have before you a measure brought by Council Members who are, in what some may term a most unseemly fashion, intent on breaking the East Race Area Plan. They do so as an ill-considered accommodation to Mr. Matthews, who is now famous for his unwillingness to respect duly executed planning rules, and who is now determined to build an over-sized and over-priced apartment mega-block that would destroy the fabric of the East Race neighborhood. I cannot urge you too strongly to rebuff this effort to unduly enrich himself at a terrible cost to the community. I will remind all, that the existing area plan for the East Race, despite its curious mis-characterization as a part of the CBD, was carefully drafted in accordance with sound planning principles and with a responsibly sensitive vision for the neighborhood as a diminished-scale mix of small business and residences, as a transition zone between Downtown and its surrounding residential neighborhoods, and was done so with the involvement and approval of the East Race residents. Thus, in the Plan, the river is very deftly reinforced as the natural eastern boundary to Downtown, and is provided with an easy and more relaxed human-scaled access to its eastern bank, from which the community at large can experience this priceless asset, framed against the backdrop of the Downtown to the west. This Plan is a fine piece of work and a credit to the art of city planning. Then along comes Mr. Matthews, with his now-characteristic Give-Me-an-Inch-and-I'll-Demand-a-Mile attitude and a grim determination to turn property less expensive because of the Plan's limitations, into a gold mine of greedy and insensitive over-development. And to add insult to the intended injury, he delegates its design to cheap and undeveloped student talent. It is hard for one to imagine a greater poke in the eye to the best interests of the community. Sadly, because he has marshalled some popular support from a demographic unable to see a picture larger than the screen of their phones or smart enough to realize they cannot afford the rents, and because the pressure of TIF expectations has fostered impatience and discontent among certain short-sighted Council Members. This Commission is being pressured to abandon its sound planning practices in favor of a Plan-of-the-Month approach, in shameless capitulation to the wants of a greedy special interest. To cave in the face of this unseemly pressure would be a renunciation of the higher purposes of city planning and its responsibilities to the community at large. If Mr. Matthews wants to build a high-rise, he should buy land across the river that is priced for its true development potential to do so. Instead, his self-proclaimed "special" status and an arrogantly naked greed leads him to, once again, insist that he be treated differently than everyone else, so that he is free to grossly overdevelop his cheap land to make a bigger buck, regardless of any detrimental effects on the surrounding neighborhood. I won't speculate on the reasons the Common Council seems so eager to abandon its responsibilities to the community and pander to his greed, but it is clear they are not acting in the best interests of South Bend. Therefore, the community can only hope that this body has a better grasp on their dedication to do the right thing and stand fast against special interests and their cohorts, and to resist ANY change to the present zoning for the East Race. On behalf of our community, I strongly urge this Commission to stand fast behind the current area plan and insist that its current limits are both appropriate and validly enforceable. Just say no to the influence of money eyed special interests that only care about their own bottom line. Our community is counting on you not to abandon their best interests. Final thing, I would note too there is a big deal made about the amenity that Matthews has cleverly included in his plan on the first floor. You don't need 150 foot height limit to have a grocery store in the neighborhood. That can go in at a 60 foot limit and still be under. This business of give us all or you get nothing is a blatant

attempt to unduly leverage this outrageous plan as being good for the community when in fact nothing could be farther than the truth. This island at 60 feet works just the way it is supposed to, and if the Common Council is getting antsy because it is not raising money fast enough in TIF funds I suggest they need to readjust their perspective on the situation.

PAUL TIPPS: I reside at 1938 Ribourde Drive. I am here to speak in opposition to the text amendment and specifically the format. I am here against the text amendment, but I support the staff recommendation that there is a right way to do this. I think we are putting the cart before the horse. There is a procedure in place to soliciate the input from the entire community, especially the community that is most affected in the 4th District and the Howard Park Neighborhood. We have heard some of the City Councilmen say that they have gotten feedback, but nobody specified where that feedback came from and what the forums where that go together to get that feedback. I am not an architect or engineer, I can't talk about shadows, sunlight, setbacks or anything of that sort. I am a retired banker, spent most of my career in commercial real estate finance and commercial credit analysis. In fact, I was involved with 1st Source Bank and the commercial financing for the Pointe Apartments to the north here. Again, I think we are putting the cart before the horse with this, my label, spot zoning, island zoning if you will, perhaps more accurately. Again, I think there is a right way to do this. I was surprised and disappointed by the Council's presentation, especially the Vice President of the City Council and a member of this Plan Commission dressing down the staff of the Area Plan Commission. What I see to be his ignorance or at least he didn't know about the rules and procedures of either both the City Council or this Commission that he is a member of. A lot of antidote support for Martin's Supermarket and the pharmacy, with all due respect to Mr. Bartles, I think he has done a very good job, but there is no feasibility study in place. No one has presented any type of feasibility study showing this demand or need for this height. An AMI appraisal generally, if it is done well, includes a feasibility study. I should also mention I am a citizen member of the City Council's Community Investment Committee. I didn't vote for it, but over my objection, the City has approved over 10 million dollars in financing and five million dollars of TIF funds. Basically five million dollars to buy three floors of air rights taking it down from twelve stories to nine. And over six million dollars in tax abatements in an almost unprecedented way with five years 100% abated and the remaining five years with 95% abated. Again, we saw Eddy Street Commons here Phase 2 right before this presentation, if you notice the space that wasn't addressed was for future development, frankly that is for a supermarket. Within one mile of the new Martin's. We are going to get two if we get one. Again, strongly agree with the recommendation from the staff that there is a right way to do this, that we take our time, there is no necessity to rush through this. Make it a transparent process and get rid of this opaque process that we are faced with right now.

MICHAEL LYKLOUDIS: I reside at 17583 Ironstone Road, South Bend. I am an Indiana registered architect, member of the American Institute of Architects. I am also a faculty member in the School of Architecture at a local University, but I am here as a private citizen, as a interested local. I have been part of the invisioning process for South Bend since the early 90's when my students prepared a visioning plan for the city and showed it to Mayor Kernan. Subsequent Mayors also got interested in the idea of a mixed use downtown, how we might actually move the city forward. I have been a proponent of many of the principles outlined here before us today. However, I am in opposition to this project primarily because I found no business strategy. These types of projects require a fairly extensive feasibility analysis/market analysis, housing absorption rates and the like, and there has been none of that shown. There has absolutely been no discussion or proposal for nuance architectural solution and urban solution. What is the massing? We were just presented with a soviet style slab, basically a one type of housing, one type of construction without any nuance with sensitivity to what the local character or the local needs are. So both the financial and architectural feasibility studies are absent. There is a danger in all of this. The danger is that we move too fast, too quickly and failure is a distinct possibility in this case. I have spent my career advising on the growth of cities, on the growth of mico urbanism, which mean the

dealing with local block structures and street structures, and I can tell you I have never seen a project that has moved this quickly to this degree without further scrutiny. The proposal you saw earlier was well thought out and had professionals presenting the material, the feasibility analysis, the financial analysis. This has none of that. If this project goes, it fails. If it fails at any point in its trajectory, especially after it is built, it will kill development in South Bend. I think that is the real danger that we have here. It is not just that it might be ugly, we don't like the size or the scale. It is that it hasn't been thought out. I urge you to not approve this until such time a feasibility study, the finances and character of this project are clear to everybody.

DEAN BERGAMAN: I reside at 218 S. Francis Street, South Bend. I am a registered architect in the State of Indiana, founding member of Downtown South Bend. Worked tirelessly to help get the 2008 plan approved, participated in many charrettes with the developers, JJR Smith Group. There were literally hundreds, if not thousands, of ideas that went into that plan. The thing that was most exciting was I moved here with my wife, who is a faculty member at Notre Dame since 1990. It was a beautiful plan done by two architects, beautifully illustrated for our East Bank. We had just cleared out the East Bank and had real hope that this was going to be a transitional piece for our city. Not one person's city, but our city. What I have watched, unfortunately, we took what we could get. Three office buildings that did not follow the plan at all. The plan was never adopted. The beauty of the 2008 plan was a lot of thought went into it and to the city's credit, planning groups, the Area Plan Commission's credit it was well done and well thought out. And, so we have an opportunity and I think we have a responsibility to honor our city and do what is right for our city in terms of a project that is the appropriate scale for our city. Let me give you just a little bit of context. Does anyone know how tall the addition is to the Notre Dame Stadium?

DAN BREWER: Eight stories?

DEAN BERGAMAN: It is less than what you are asking to approve. So if you can visualize transforming that image and putting it literally on the face of the sidewalk on LaSalle Street north facing. The sun will never see that site. These are some huge implications that people have a right to be worried about because it is our community. The Commerce Center, well within that 60 feet. It is a very massive building. Stephenson's Mill and old industrial building, the Singer Building that became part of the Madison Center complex, all within that height. We look at those buildings, big industrial buildings, even the Renaissance District is less than 150 foot high. So if we look at some context in terms of what we are doing or about what we are about to propose for one individual, I think we need to give pause as Mr. Lykoudis, said to a planning process that is indicative of the investment that we are about to make. We are about to invest, potentially, with the Regional Cities money almost half the cost of the investment. That is pretty good investment if I could get a developer to come in and get half of my project paid for. We have other very important parts of our community that we need to consider. It is not all about the East Bank. We have limited dollars. We have a generally conservative nature in the State of Indiana that wants to be very frugal with our investment and our projects. I encourage you all to step back and not hear the false voices in the audience, for example the East Bank Neighborhood Association which didn't really exist back in 2008 as it currently does now because Mr. Matthews started it. He came before you on the development on the corner of Niles and Jefferson asked for two more stories that he got under a PUD. There is a history here of asking for more, backing down, getting a compromise. It is a rush, rush, rush we won't lose the money that has been given to the region. It isn't going to go somewhere else, there is plenty of projects in line that maybe better qualify for that investment. Maybe he will still get part of it. I think, and I encourage you all to give very, very serious consideration to the fact that there have been no financial feasibility study whatsoever. I don't want us to make the same mistake. I have lived here for 27 years and when I was riding around in the back realtors

car back in 1990 looking for a home, the reference was to the Studebaker Corporation in 1963. It used to be good when... So as we all work, which is what we all are doing to provide quality of life for our community, lets make sure it is a true quality of life and not just a massive building because it's the only thing that is being talked about right now at our expense. I really strongly encourage you to give this the time that it needs for the investment that we are making on behalf of our community and our taxpayers.

RON RYDECKI: I reside at 123 S. St. Peter Street, South Bend. My business is located at 721 E. Jefferson Street, South Bend. I have been in the neighborhood since 1964. I represent the Howard Park East Bank Neighborhood Association. We are the oldest and most public association in the neighborhood. We worked with TRANSCO to get the housing on that site. We believe in our community. I served on the planning committee along with many, many citizens. When they talk about nothing has happened, well figure, in the recession of the last eight years. Nothing has happened anywhere in the country. Yesterday, at our regularly scheduled public meeting, our association voted to support the recommendations of the Area Plan Staff Report. It is to send an unfavorable recommendation to the Common Council for the text amendment that would increase the allowable height to 150 feet. Public statements made by City officials and Mr. Matthews after the Area Board of Zoning Appeals (ABZA) voted down the request to change zoning for the proposed project have lead us to believe that the request before the APC can be called spot zoning. The classic definition of spot zoning is the classification of property totally different from the surrounding area for the benefit of the owner of such property at the detriment to the other properties. What I believe they are doing is camouflaging a spot zoning within this amendment because most of the land on the island has been developed and is being used effectively. We feel that the proposed text amendment meets the definition of spot zoning and should be sent to the council, with an unfavorable recommendation. It has come to our attention that for many months Mr. Matthews has been neogoting with AEP to do a land swap exchange for the land that has the substation on it. This information was finally made public in the Tribune this morning if you read the business section. No one has ever come to our neighborhood association about this project and I was asked last night why didn't we hear about it. Has this text amendment been properly given to the citizens with plenty of time address this? Does your attorney have that answer?

DAN BREWER: I am sorry, your question is?

RON RYDECKI: Has it been properly filed consistent with past text amendments in terms of public notice?

DAN BREWER: We can answer that after the public hearing has been concluded.

RON RYDECKI: From minutes at a meeting that was held on December 7, 2016 where city officials, the developer and his staff met with John Torti with Torti Gall, a high regarded Washington-based consultant, to discuss the many issues of this project. The major points that came out of this meeting from the consultant was the building height, which he recommend should not exceed 96 feet, that the AEP land or Fire Arts Building become part of the project to spread the building and parking over a larger footprint. The consultant also addressed the size of mass of the building, the apartments relationship to the parking garage, the challenges of supermarket in urban setting, the wood modular construction for the apartments. In fact Mr. Matthews, when he was asked about this by the consultant, he said that is proprietary information. I choose not to discuss it and the constraints of the parking and access. All the parking will be accessed off of Sycamore Street. It is a very narrow street, if you could call it a street. To our knowledge the suggestions of the consultant have not been acted upon or publically discussed untl today at this meeting. The only action that the city has proposed is a text amendment before you. Howard Park Neighborhood Association meets publically on the third Monday of every month as John

Lesczynski could attest. We are very committed to our neighborhood. The proposal that we supported was the proposal that was accepted by TRANSPO as the best proposal for a neighborhood.

MARY ROSE ESLINGER: I reside at 307 E. LaSalle Avenue, South Bend. I live at the Pointe at St. Joseph. It is a wonderful apartment building and it is going to be right across the street from this development. I am opposed to this development because I don't like the height. My quality of life in my apartment will be diminished. It is going to be dark, dark, dark. My apartment is full of light because it borders on a corner. I can see downtown South Bend from my dining room. It is beautiful. It has so much light. I am going to get pretty damn depressed if I have to have my lights on all the time, which is what I think it is going to be. That is my biggest concern. They have done the sun studies and I hope you have seen that and are well aware of the light factor. I would like to say that I think the problem is going to be the traffic. Being on LaSalle, at the Pointe there are two driveways and I have to tell you that in rush hour, I might want to go east on LaSalle making a left hand turn and I can't do that because of all the traffic coming into town, so therefore and I am not the only one who has to do this. I am not the only one from the Pointe who is opposed to this development. I have to go west, go up to Sycamore, maybe, if I can get in, or go all the way to Michigan and go around and back down Colfax to go east. It is going to be a cluster. Anybody who lives in that area knows about what the traffic is like. Go to the 7-11 and see how many cars are parked in there and what a cluster that is. There is all kinds of activity going on on LaSalle. St. Joseph High School is there. There is the traffic for that. Has anyone done a traffic study? This gentleman said that when you go down Sycamore, you can basically have to turn to the right to let another car pass. There is also the Maennerchor Club, where are those people going to go? Where is their overflow for parking going to be? I just think that I am for progress. I am for people to move in and not have a car and find housing. This gentleman who was speaking before could be at the Pointe and there are other apartment complexes, it doesn't have to be David Matthews. The issue here is people are talking about downtowns, you notice, everyone is saying downtown this and downtown that. Well downtown is on the west side of the river as far as I am concerned. We are the East Bank Village. We are the Village, it should be like a village and characterized as a Village. Don't be swayed by all these people who say they are for it. Oh yeah, I'll tell you what they are for, they want a Martin's and they will do anything to get a Martin's but I think that basically, the Martin's and the apartment complex is wrong, it is wrong for that block. Go somewhere else.

REBUTTAL

OLIVER DAVIS: Couple of things. Several things I would like to address. First of all this is a text amendment. In terms of battling the height, the traffic and everything else, we have done that. The key option of whether this is the appropriate format, I share with you the council that I received from the Area Plan leadership, which wasn't addressing the reality of what I receive, but I did receive it. So, I am just telling you what happened. If telling the facts in this day, when facts are cheap, is distressing, I am scared. I think you need to know the facts. I think you need to know what Area Plan has shared with me and their counsel toward me. What I shared with my sponsor so we would not have wasted our time coming before the community with the agreement in terms of something that we thought was good, but we would have focused on the text amendment last year if that was the advice we were given so I would like to address that. Secondly, in 2008, this is my tenth year on the council, only Karen White and Dave Varner have a longer tenure than I have. I was there at the meetings in 2008, my rookie year. I was there when we made these plans and in 2008 that was a very interesting year. We also had to consider raising taxes in the City of South Bend and because we raised taxes in the City of South Bend, we as a Council along with the St. Joseph County Council who helped us out, were able to be able to be in a position where the recession did not hit the City like other cities around the State and other places did. We made plans to put us in a place to do that even though that was not a popular decision at the time. I thought I would never be reelected. But I was there in 2008 when we did that. I was at the charrettes when we were at the meetings. So I heard those concerns. One of the things that was part of those plans

was that the city was going to help when a developer came. We didn't know it was going to be Dave Matthews or whoever, we just said we would put in monies to help the developer because we needed that place to be. It was not based on particular developer, whatever color, whatever race, gender, who they were, we were going to help them. The fact that Dave Matthews has been creative enough and blessed enough to also get Regional Cities monies along with what we have already admitted to him that we were going to help, that is just creative and very, I would say resourceful developer. So much of this time as you all know, and the public knows that I was on the side that voted against the first two. One of the reasons was because the City had not yet put their monies into it like we promised we were going to do in 2008 and they should have up front. There has been sometimes a negative characterization of Mr. Dave Matthews and one of the things I try to do as a legislator is not get caught up in who that person is. Mr. Matthews has done a lot of good things. To try to characterize him as some of the people have done here and not only this meeting but another meeting, I am just shocked. I have been able to talk with him and I must say the original plan, as you all know, was for 12 stories. In talking with him, if he is still at 12 stories today with all the opposition that he has faced, I would be too against this. In talking with him and understanding the issue of what Ms. Eslinger said and others talking about the shadowing and everything else that we saw in those pictures, he moved it down to nine stories, which I think was a good compromise. I appreciate when developers come into this town who live in this town and they work with neighbors, may not get every single thing the neighborhood wanted, may not get everything the developer wanted, but they come to an understanding of agreeing. That is why we have a Board of Zoning Appeals. That is why we have Area Plan to make variances. Variances means there is a change. That is why you vary. There is the plan, then you vary. A variance means that. When we do that then we send things, the system allows us to have the ABZA or we make those variances here today. So, we have a plan and the plan recognizes the fact that in 2008 who could sit up here and say we had all those changes coming? It was such a beautiful plan, beautiful plan. In October of that same year, Senator John McCain almost had to suspend his campaign, as you recall, because the whole crash of the finances. Everything happened in the election that year. That beautiful year was an amazing situation. Ninety six feet, Mr. Frank Perri always challenges Mr. Matthews and Mr. Matthews challenges Mr. Frank Perri as we know in the record and I both childed them for almost acting like Kindergarteners in front of us many times. Frank Perri himself asked for ninety-six feet, which we granted and was granted by the ABZA. Ninety-six feet is not sixty feet, it is thirty-six feet in height. That was the change made. So when someone else asks for it, no we are not going to use Dave Matthews. You start to get in on the issue of you start to choose who you want. If Frank Perri can do it, but Dave Matthews cannot, that is dangerous stuff. So, we have to be very careful about dealing with that issue. There was a statement by the professor here that it will kill development. I would love to see his research. I also am a member of the academy, taught at IUSB for several years and was the chair of Bachelor of Social Program at the University. I would not make that kind of a statement in front of my students unless I had my research. Because another academic in front of him would challenge that. It will kill all of development coming to South Bend? Does he have all the facts that is going to cover South Bend? Right now we have development coming to us from Portage Prairie, is this going to kill development in Portage Prairie? We have development that is coming to us last week, the Dollar General coming on the west side. Is this going to kill that development? We have development coming to us at the ballpark, there is going to be nice apartments there. Is this going to kill the development at the ballpark? We have Eddy Street Commons that we just voted on. Is this going kill development? I can say that it is not going to kill all of those, so his statement that this is going to kill all the development in South Bend was a fallacy for him to say that. As an academic, I was highly amazed. So I would not make that kind of a statement because the word all is exclusive as you all know. Therefore, the role for us is to be able to have variances to make a text amendment as Mrs. (Angela) Smith advised me which I advised our team and said this is Mrs. Smith's recommendation, let's move forward with our attorney's. Mrs. Aladean DeRose is here. She worked along with Area Plan and had conversations with them. We worked together with them, we even asked for a substitute version that came to us that we were willing to look at all these different things and so we have been willing to show flexibility. You have shown it earlier. We want to

show it as a community, again the text amendment, the role of our staff. I was there in 2008, 2017 we are here. Finally, we have to make sure that we are consistent and not do one thing for one developer and not the other. Whether it is Dave Matthews, I am glad he is not here today, because this should not be based on Mr. Dave Matthews, it should be based on the fact that we need to make South Bend better. I am glad we have traffic. In closing, I was in church this past weekend. I heard a lot of noise, kids making everything else and I told one of the leaders there, I like to hear the noise. The noise lets me know that you have a growing church. Babies crying and everything else. When you have in 2008, people say we had a dying city. I love as a person working with development to hear people we have a traffic problem now. We have housing problems now. We have development issues here. It drives me a little bit crazy to deal with it all, but I love it because it means our city is booming. Our city is coming back together. I would rather have this situation when everyone else is asking for development in their city. I would rather have this situation than have a city that is not having the sounds of little children and families coming together.

LARRY MAGLIOZZI: In regards to Mr. Lykoudis questions about due notice. This is a text amendment. It is a little bit different than a map amendment. We don't notify surrounding property owners or neighborhood associations. The State Statute only identifies that any zoning map or text amendments to the zoning ordinance be referred to the Area Plan Commission. That is all it says. So the method of referral is really up to the local folks. I received a letter signed by two councilmen, with a third listed but no signature. We received that two days before we had to advertise in the Mishawaka Enterprise for this meeting. It takes time to vet the actual ordinance. Our primary concern was to make sure that the title, legal ad, was in proper order so we could hold the public hearing today. Angela and I had some minutes available Monday that we had made some suggested changes to the text. We did that so council could hold First Reading.

I do want to make a comment about Mr. Davis' comment about the staff suggesting that this is rare. A text amendment is what should have been done. I recall back in the fall that the staff had submitted a document that outlined three different scenarios for various aspects of this project. One being a text amendment. If you recall the two staff reports that we presented so far during this process one to the Plan Commission and to the City Council with the actual PUD zoning and the other one just last month for the ABZA height variance. We couched that within the context of going back and revisit the plan. I think we have been fairly consistent with that and consistent with this. That text amendment is definitely the appropriate, legal way to do it and you have to do it within the context of what the staff report said. If you go back to the community and revisit and get their feedback over the past several hearings. I want to clarify one point, and Angela did mention it, because of the little time period that we had to actually vet the text amendment. Usually we have five to six weeks if not more as we work with the Council to prepare a text amendment. We did not have that luxury on this one. But 150 feet, if passed by the Common Council, that is the maximum height of the building. The zoning ordinance also allows an additional 25 feet above the 150 feet for the various structures that are related to the operation of the building, spires all kinds of mechanical equipment, domes and other things. One hundred fifty feet is the maximum height, under the context of this particular project this building could grow to ten stories, potentially 11. I am not sure. It depends on the actual design of the building. I just want to make that clear for the record. Going forward, the building could potentially exceed the height of the resolution that was referred to earlier.

STEVE VOJTKO: I have heard a lot of compassionate pleas on both sides. It seems like one of the things that the Area Plan Commission is challenged to do is follow some of the rules and guidelines, and one of them is to follow the Comprehensive Plans. I notice there have been quite a few of them over the years. Some are outdated, but they are still Comprehensive Plans. It seems like this text amendment is kind of like circumventing the Master Plan process. I would rather see the master plan have an amendment done to by groups of parties involved and then come to us and ask for a text amendment or

something of that nature or to approve an amended plan. The way it has been done now it just seems like it is circumventing it, leaving one group out and letting developers have their say. I would just like to see more public input and what they have to say

DAN BREWER: I would just point out, this doesn't cut one way or the other necessarily, but this is a text amendment covering the whole little "yellow" island there (pointing to the powerpoint). This is not a hearing on Mr. Matthews's proposal or project. It is not a whether or not we have a Martin's or a CVS. This is a text amendment for that particular area, all of which falls within the area of the Central Business District, which is known as the East Bank Village. Just a point of order. Everybody is governed by whatever height restriction is proposed by the Common Council.

OLIVER DAVIS: Which means everybody in that position weather if it is Mr. Frank Perri, if he want's something, I know he is coming to us soon. If his is over 60 feet, he will be able to do that too.

DAN BREWER: That is my understanding.

JOHN DELEE: Has this text amendment been supported by the whole city council?

OLIVER DAVIS: The process of a text amendment when we have done it in the past it comes here like it was stated. The first thing is that it has be presented to Area Plan. After it has been to Area Plan and is voted upon, it goes to the Zoning Committee that I chair on the South Bend Common Council. From there it goes to the full Council. It is scheduled to go to the full Council on this coming Monday. So that is where it is. Given the issue of time, staff clearly knows that we are dealing with a timeframe. They have to be done by this coming June, regarding the whole situation. So we would like to get that off. The idea of all of this has been given prior to the deadline. There is no deadline that it has to be done five or six weeks ahead of time and so we have been working on it for the last six months, but the first process is to come here and then go to the Council.

DAN BREWER: Why the June deadline?

OLIVER DAVIS: The June deadline comes up with the issue regarding if the proposed situation can not be approved here, then that monies for that particular program is going to be possibly changed to another location. It won't happen here because part of the funding is the Regional Cities money. But the process since we have been dealing with this, they started in June and we got it in August. So it hasn't been a very quick process.

JOHN LESZCZYNSKI: Oliver, if you could clarify a little bit. John (DeLee) has been out of the State for a while. This is a result of the City Council voting. I don't know what the vote was, but it was in favor of this amendment.

OLIVER DAVIS: That is correct. I am glad you said that.

JOHN LESZCZYNSKI: This Text Amendment is a reaction to that vote saying it is a positive.

OLIVER DAVIS: I am glad you shared that Mr. Leszczynski. Regarding what he just shared, we worked out a compromise because there was an issue of nine feet, twelve feet so the Mayor's office and the Council came together to come up with a compromise. On January 8, the council, voted I think 7-1, that the compromise was agreed upon. In answer to your question, the Council was animated but it was his team and the full Council was clearly aware of the 150 feet and the building and everything else, ok? So 7-1 the Council with the support of Mayor. We have his Chief of Staff is here, Dr. Mueller. So his team worked along with the development team and so that was passed by the full council 7-1. One

person was not there. Which is more than any kind of veto would support. Then it went to the ABZA because of that situation. The way it was, that was voted down. So that is why if we would have had a text amendment the concept of 150 feet and a lot of the issues that was shared today, The Mayor and Council have already heard all that. That was already voted 7-1 in favor. That is why it was advised to come back here to do the text amendment for this to make sure that this is in keeping of all of that. We did other votes when it came down to the Ninja Golf thing, that was 13-1, I was the only one that voted 1. I almost just voted one that day just because it was a 2002 plan. It was a 2002 plan and we are going to stick to a 2002 plan, boom, but we didn't stick to the 2002 plan. We made arrangements cause to stick to a 2002 plan, that would have been voted down 14-0 that day. But we made arrangements for that plan, and so my protest vote for that day was we take the time to adjust our plans for a lot of different things since I have been on this Council. We keep it within spirit of that. Back to Mr. Leszczynski's statement that the City Council did support that and so that is why we are still here.

DAN BREWER: The City Council passed a resolution...

OLIVER DAVIS: For the compromise.

DAN BREWER: In favor of a compromise.

OLIVER DAVIS: The original plan, was voted against the twelve stories. Ms. Eslinger and many others came up there and shared the issues regarding shadowing and everything else, which were very legitimate issues. Even Dave Matthews himself argued against the same argument. We listened to all of that. So we encouraged him to lower it down to nine stories. To hear the neighbors, to keep the Martin's, to keep the apartments going, to bring everything together, let's have a compromise here. Let's put this here. Same thing we have been trying to do with all of our developer's around town. Work with the neighbors, come to some kind of mediation here. It may not get over here, or all the way over there but if we can get somewhere in here, we can have some level of peace and have a good strong community. That helps the developers and helps the City Council to agree to that 7-1 on January 8, 2017.

JOHN DELEE: I am all for following a plan that has been thought out and worked out and approved. Also, the City Council has the right to change that and it seems to me that I just heard that they do prefer this 150 foot and so I think that we should respect that.

After due consideration, the following action was taken:

A motion was made by John DeLee being seconded by John Leszczynski to send this to the Common Council with a FAVORABLE recommendation
DID NOT PASS.

OLIVER DAVIS: I make a motion to send it with no recommendation.

JOHN DELEE: That doesn't meet our rules.

DAN BREWER: Before we recognize that Oliver, do we have a motion to send this to the Common Council with an unfavorable recommendation?

JOHN DELEE: I will make that motion, because that is our rules. We don't send it with no recommendation without exhausting other options first.

A motion was made by John DeLee being seconded by Jordan Richardson to send this to the Common Council with an UNFAVORABLE recommendation DID NOT PASS.

STEVE VOJTKO: If I may, can we make a motion to table it until we have a full Commission to vote on it? We have a few members missing.

OLIVER DAVIS: With all due respect, I think the business of the City of South Bend cannot wait on people's vacations to Florida and other places they go. The public business has to be here. As a public servant I try to make sure I am here to my meetings. I did not miss one City Council meeting last year and told family I had to excuse myself in planning dinners away from home because of that. People's business is important. If I don't want to deal with that or I'm sick and dead and dying than I should have reported that for the business of something here. And I have to do that. When my mom died, I did have to miss that, but let's put the people's business first and not just table it based on our own conveniences.

A motion was made by Steve Vojtko and no second to TABLE this petition to the March 21, 2017 meeting of the Area Plan Commission MOTION DIED DUE TO NO SECOND.

A motion was made by John DeLee, being seconded by Oliver Davis to send this petition to the Common Council with NO RECOMMENDATION DID NOT PASS.

LARRY MAGLIOZZI: I would suggest that maybe there be a little more animated discussion for the commissioners to convince one, two or more to sway one way or the other. Have a debate I guess. Check back in your staff report and look at the criteria through which we, the staff, have done and couch your arguments on what we said.

DAN BREWER: Speaking as just a Commission member, I would say that I think it is unfortunate that we don't have more members present. This has been an issue and a project that has come before us for, I believe, the third time and it has been before the Common Council at least twice in one form or another. It has been before the ABZA and we are here today still arguing about whether or not to allow a building at 150 feet or more to be built. I think we really do have a responsibility as a Commission to follow the Comprehensive Plan. I think it is the most fundamental job that we had. It is not without merit. We have heard people talk about the obsolescence of the East Bank Plan, but you know it is still the plan and this is not just a little variance. This is a huge deal and they want to go much higher. Even though this is a text amendment for an area of ground in the city that is much bigger than the Commerce Center project, it seems that is really the focus of much of the remonstrance. It just seems that we need to have ordered development in town and we can't allow ourselves to be swayed by ideas that people would prefer. Anyway, I am unfomfortable with the text amendment for that reason. It would deviate from the Comprehensive Plan so drastically.

LARRY MAGLIOZZI: Just a matter of procedure, if we can't get any kind of recommendation whether it is favorable or unfavorable we can't move out of the Commission, so it most likely will default to table. It is just a matter of procedure.

MITCH HEPPENHEIMER: It doesn't go up to the Council then.

LARRY MAGLIOZZI: We need a recommendation.

ADAM DEVON: Can there be...

OLIVER DAVIS: I would like that to be consulted with our attorney.

MITCH HEPPENHEIMER: This is the Area Plan Commission Attorney, not your Council attorney.

OLIVER DAVIS: I understand that. But also your situation of your legal team, your President, with all due respect, was planning our attorney today, I didn't want to go there. For the fact of the point that they were trying to keep me from even talking today and send the amendments to us. Our person shared that with me and there has been a hostile environment coming from, I would prefer that if you want to continue that conversation, do I need to let all the members know how I as one of the sponsors was treated today and was prevented from even talking? To get an email in the middle of the day from Mr. Brewer.

DAN BREWER: You were not prevented from talking today.

OLIVER DAVIS: Sir, do you want me to read that e-mail?

DAN BREWER: You were not.

OLIVER DAVIS: Do you want me to read the e-mail? I had to fight back so I could have that and had to consult with our attorney in the middle of my day. I had to stop my work day with my young people to do that. Do I need to read that for the record?

MITCH HEPPENHEIMER: Mr. Davis.

OLIVER DAVIS: I just want to know if I need to read it for the record.

MITCH HEPPENHEIMER: No.

OLIVER DAVIS: Thank you. I didn't think you all wanted me to read that comment that you all shared with me for the record. I don't mind reading it into the record, but my point to you is this. When I am the presenter, and I am having to be told not to do that right now and to silence me that was ridiculous. There has been a hostile attempt and this is the way we felt in the Council. We got recommendations from Mrs. (Angela) Smith, then we get a recommendation from you today, we had to call our attorney in today to deal with this. This is has been really ridiculous and with all due respect to you, Mr. Brewer, as a chair you said that we need to follow the plan, but in our last meeting in January we voted against a 2002 plan to allow the County Council to have that whole development there. That was not in the 2002 plan sir. I was the only one out here out of a hostile vote to show that we can allow these people in the County to have a whole change. I asked if they could have written commitments before I would vote for it and we allowed them to proceed without any written commitments, without anything else. They would change the 2002 plan, no problem. You didn't fight to say that we need to stick to the plan with this one. You were one of the persons, Mr. Brewer, with all due respect, to vote for that. My point to you is if we are going to be consistent lets not choose Dave Matthews to start with things to be consistent with. That is not fair. Let us be consistent and we can not go to one meeting in January and say that we are going to say this 2002 plan does not make any sense, but we come to this meeting we are going to challenge the 2008 plan. That is not consistent. One thing I want people to remember about Oliver Davis is that on my tombstone Oliver James Davis, 10-13-1968 to whenever that date is under that He was fair, that is all.

STEVE VOJTKO: One of the reasons I asked for it to be tabled because, correct me if I am wrong, but it was because we have two members that retired. Is that correct?

DAN BREWER: Mr. Phipps's position has been taken by the man sitting next to you. So there is one.

STEVE VOJTKO: Then we have Mr. Sutton.

MARTIN MADIGAN: I just had a comment here. We are the Area Plan Commission and this is South Bend that wants this. I wouldn't want any outside group telling me what to do. They can recommend to me, for guidance, but I believe we ought to send this to the South Bend Common Council with no recommendation. Can we vote on that again?

DAN BREWER: If we had, this is in regard if we table this, if there were information still lacking or if there was some movement that could be made as a result of collaboration or conferences, and more discussion, I don't think tabling it would be a bad idea. However, it doesn't seem to me that there is.

JOHN DELEE: The people that approved that old plan was the City Council of the City of South Bend.

OLIVER DAVIS: That is correct.

JOHN DELEE: Now we have an amendment from the City Council of the City of South Bend to make a modification. I don't see how we can interfere with that process.

JOHN LESZCZYNSKI: I agree with John here. We don't have the time to debate this or delay it or to move on with this. There is a lot here. We have several individuals here, Mr. Bartles is one, Mr. Matthews is another, that want to put a lot of money behind this thing. If it is the wrong plan, they are the ones that are going to suffer. No one is going to rent those apartments or they won't even get them off, finance and stuff like that. They are taking the risk. We are giving them the opportunity to fulfill a dream that our South Bend Council the ones that are elected. We are appointed bodies up here to this Commission. They are the elected officials that have speak to the public in their districts that on whether or not this was a good plan or not. I really think we have looked at it. We have vetted it. We are close on this kind of thing. I really think that we should give them the opportunity to see if it works and to make it work. Give it their best shot. It is the South Bend City Council, as you said, it is their decision, not ours. If they come back in a month and make the text amendment, they are going to make it. They have 7-1. Votes, it is going to come back. We are just helping to facilitate that at this point in time.

MARTIN MADIGAN: We have great guidance here. I have to praise these individuals down here (indicating staff).

DAN BREWER: I appreciate that John, but the Council has the only authority here. The issue is what we want to do. We need to do the proper thing here as the Area Plan Commission.

JOHN DELEE: It is our responsibility to make a recommendation and at this point we are not doing it.

DR. JERRY THACKER: It seems to me, as we look at this initiative, the State of Indiana granted several different huge sums of money to create entrepreneurial opportunities and to stimulate economic growth in the communities, and we have an opportunity to take advantage of that. It is a challenge. We have people for it, against it, but many people are for it. We have representatives of the City Council. We have representatives of the Mayor's staff who are really coming here and saying can you guys approve this and get it back to us so we can deal with it. Is or isn't that what they are really asking?

JOHN LESZCZYNSKI: That is right.

DR. JERRY THACKER: If we look at any kind of a compact that is developed, if we could never

change it, could you imagine, women couldn't vote. Women would not have the right to vote if we couldn't change anything. We would only have 48 states if we hadn't let Alaska and Hawaii come in. It is ok that we reach some compromises. We are looking at our communities saying we need to collaborate and reach some compromise. Our staff did a fine job at following what we want them to, but our elected officials and Mayor's staff would not have come back and asked this request if they didn't want to have to deal with it. At that point then they get to address all the different compromises and issues with the community.

Upon a motion by Adam DeVon, being seconded by Martin Madigan and carried, a proposed ordinance of Common Council of the City of South Bend amending Chapter 21, Article 3, Section 21-03 of the South Bend Municipal Code by adding a new Sub-Part-21-03.06(b)(4)(C) to increase the maximum building height permitted in CBD Districts located between the St. Joseph River and the East Race Waterway, is sent to the Common Council with a FAVORABLE recommendation.

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Miscellaneous:

- A. Findings of Facts for granting of Variances for property located at 3720 Lincolnway West, City of South Bend - APC# 2806-16.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Steve Vojtko and unanimously carried, the Findings of Facts for granting of Variances for property located at 3720 Lincolnway West, City of South Bend were approved.

- B. Findings of Facts for granting of Variances for property located at a 119.89 acre tract of land near the corner of Mayflower Road and Adams Road Abutting the St. Joseph Valley Parkway, City of South Bend - APC# 2807-16.

After due consideration, the following action was taken:

Upon a motion by Steve Vojtko, being seconded by John DeLee and unanimously carried, the Findings of Facts for granting of Variances for property located at a 119.89 acre tract of land near the corner of Mayflower Road and Adams Road Abutting the St. Joseph Valley Parkway, City of South Bend were approved.

- C. Appointment of Kara Boyles from the City Engineers Office to the Plat Committee and Patrick Corbett Kerr and Rich Estes as alternates.

After due consideration, the following action was taken:

Upon a motion by Oliver Davis, being seconded by John DeLee and unanimously carried, Kara Boyles was appointed to serve on the Plat Committee of the Area Plan Commission for 2017.

Upon a motion by Oliver Davis, being seconded by Steve Vojtko and unanimously carried, Patrick Corbett Kerr and Rich Estes were appointed as alternates to the Plat Committee for 2017.

2. Executive Director's Report:

LARRY MAGLIOZZI: First to follow through with the Plat Committee, Phil Sutton has retired from the County Extension office. He was a member of the Plat Committee, so we actually have a vacancy on the Plat Committee. We have some ideas on how to fill that and will have a recommendation for you next month.

OLIVER DAVIS: Did we send him a thank you or anything else from the Commission or something to congratulate him on his service?

LARRY MAGLIOZZI: We can send a card around next month.

OLIVER DAVIS: I just think the resolutions are good for their service, but...

DAN BREWER: So that appointment of Phil Sutton's replacement is really a matter of who takes the job as the Extension officer?

LARRY MAGLIOZZI: For the Plat Committee, it operates much differently. The Plat Committee is composed of five members, only one needs to be represented on the Plan Commission, which is John McNamara. The other four are really members from around the community, generally the City or County offices that review the subdivision plats and are readily available for the Plat Committee. Those take place at 8:30 A.M. twice a month. We will probably not reach out to the County Extension office to fill that position, but they will eventually need to fill the Plan Commission when they hire a new County Extension Educator. Again, our State Law says they have to be on it.

We are very close to the draft of the Lakeville Zoning Ordinance that we have been working on. We never got a motion from you to work on it on their behalf. If you don't mind making that motion today. You may see it in May.

After due consideration, the following action was taken:

Upon a motion by Oliver Davis, being seconded by John DeLee and unanimously carried, permission was given to initiate an ordinance to allow the staff to draft a new Lakeville Zoning Ordinance.

LARRY MAGLIOZZI: We have been asked by the County Council to consider changing the notification radius from 300 feet to 660 feet. Because in the county there are larger parcels of properties, not enough folks are getting notified by letter.

JOHN DELEE: Is that a State Statute?

LARRY MAGLIOZZI: No. The posting of the sign and the notifications is a Plan Commission policy. Most, if not all, Plan Commissions do that. The only legal requirement is an ad in the paper. We did some research and a lot of communities use the 660 feet. Some still use the 300 feet. We ran some numbers on what impact that would be. Obviously there are more letters going out, more stationary, paper and envelopes, and postage. We would be brining that cost back to the developers. We will still print the letters, but the postage would be back on the developers.

JOHN DELEE: Could you have two different distances like 300 for City and 660 for County?

LARRY MAGLIOZZI: We haven't approached the City Council on this yet, because this is a County Council initiated petition. We will be in front of the City County in the next few weeks to see if they desire to follow suit with that. In the City, the properties are much closer together.

ANGELA SMITH: On average, when we ran the numbers in the County, they doubled. If we ran the same in the city, it would probably quadruple.

LARRY MAGLIOZZI: We will approach that with the Common Council. I am sure we will talk to the towns as well.

OLIVER DAVIS: I think that is a good idea because of the different space out in the county and hearing some of the issues that they have shared even at that last meeting that they weren't getting notice. I think the more the neighbors out there, it gives them an opportunity to come in here and it helps the developer. Is anyone going beyond the 660 or that is pretty much the area?

ANGELA SMITH: The research that I found it seems like 660 if used in pretty much in the southern part of the State and 300 in this part of the State. The City of South Bend has one additional requirement and that is that we notify the neighborhood associations. We don't have that option in the County. That is one additional thing the city has added on.

LARRY MAGLIOZZI: That will require a change the By-Laws. We have several other changes in the by-laws that we need to work on. We will present a resolution to you next month as a standard procedure.

You all received group e-mails about this particular text amendment that you heard tonight. Our rules essentially discourage ex-parte communication. If you do receive such email in the future, you should either discard them or inform the rest of the Commission that you received correspondence that falls in context so all members are aware of that. We don't hand out your e-mails. We don't hand out your phone numbers.

MITCH HEPPENHEIMER: The staff did not release that information.

LARRY MAGLIOZZI: Some of your emails are readily available because of the work you do, but if you do get that, disclose that here.

DAN BREWER: Do you have to respond?

MITCH HEPPENHEIMER: No, but you have to disclose. Our rules say that you can not be approached outside.

3. Minutes and Expenditures:

- A. Approval of the minutes from the January 17, 2017 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by Jerry Thacker, being seconded by Steve Votjko and unanimously carried, the minutes from the January 17, 2017 meeting of the Area Plan Commission were approved.

- B. Approval of the minutes from the January 31, 2017 Special Meeting of the Area Plan

After due consideration, the following action was taken:

Upon a motion by Jerry Thacker, being seconded by Steve Vojtko and unanimously carried, the minutes from the January 31, 2017 Special Meeting of the Area Plan Commission were approved.

C. Approval of the expenditures for January 18, 2017 through February 21, 2017.

Acme Water World - \$199.00; Adams Remco - \$256.38; County Commissioners - \$8.00; Mishawaka Enterprise - \$13.32; Office Three Sixty - \$127.68; PCM - \$34.00

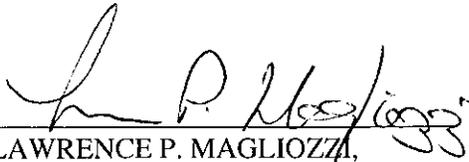
After due consideration, the following action was taken:

Upon a motion by Steve Vojtko, being seconded by Oliver Davis and unanimously carried, the expenditures from January 18 through February 21, 2017 were approved.

3. Adjournment: 6:10 p.m.



DANIEL H. BREWER,
PRESIDENT OF THE COMMISSION



LAWRENCE P. MAGLIOZZI,
SECRETARY OF THE COMMISSION