

THE AREA PLAN COMMISSION OF
ST. JOSEPH COUNTY, INDIANA

M I N U T E S

December 21, 2010
3:30 p.m.

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

MEMBERS PRESENT:

Dan Brewer, Donna Chamblee, John
DeLee, Robert Hawley, Karl King,
John McNamara, Jack Mell, Gerry
Phipps, Ann Puzzello, Richard
Warner

MEMBERS ABSENT:

Robin Ackerson, Barrett Berry, Gary
Gilot, Phil Sutton, Jerry Thacker

ALSO PRESENT:

John Byorni, Larry Magliozzi,
Christa Nayder, Derek Spier,
Jennifer Covyeeou Staff; Mitch
Heppenheimer Counsel

KARL KING: Before we begin our public hearing, I would like to mention that one of our members, Jack Mell is attending his last meeting as a member of the Area Plan Commission and we want to thank him for his good service and faithful attendance. I don't know that you have missed a meeting Jack.

JACK MELL: No, I haven't. Thank you.

PUBLIC HEARING – 3:30 P.M.

1. REZONINGS:

- A. A proposed ordinance of Promised Land, LLC to zone from CB Community Business District to SF1 Single Family and Two Family District, property located at 7233 U.S. 31 South, City of South Bend - APC # 2569-10

DEREK SPIER: The petitioner is requesting a zone change from CB Community Business District to SF1 Single Family and Two Family District to allow a single-family residence. On site is an existing vacant single-family residence zoned CB Community Business District in the City of South Bend. To the north is a vacant commercial structure until recently occupied by an indoor softball / baseball training facility zoned CB Community Business District in the City of South Bend. To the east across U.S. 31 South is agricultural land and a single-family residence zoned R Single Family District in the County. To the south is the South Side Church of God zoned R Single Family District in the County. To the west is vacant land zoned CB Community Business District in the City of South Bend. The SF1 Single Family Residential District is

established to protect, promote and maintain the development of single family dwellings and two family dwellings as well as to provide for limited public and institutional uses that are compatible with an urban residential neighborhood. The availability of public facilities is required for development within this district. No site plan is required when rezoning to the SF1 Single Family & Two Family Residential District. According to the historical aerial maps, a single-family residential structure has been located on this property since at least 1966. Until 2000, when the property was annexed into the City as C Commercial for a proposed large scale commercial development, it was zoned R Residential in the County. This proposed development never materialized. According to the petitioner, the existing single-family residence has not been occupied since the early 2000s. Since the prior legally established nonconforming use of the property has been discontinued for more than 12 consecutive months, the property has lost its legal non-conforming status. Therefore, this rezoning petition was submitted so that the existing house can once again be occupied as a residence. U.S. 31 South is a four-lane highway. No access control is present along this portion of the highway. The site will continue to be served by an existing on-site septic system and well. According to APC records, the nearest municipal sanitary sewer and water are located on the west side of U.S. 31 approximately 40 feet and 900 feet north of the site, respectively. Due to its close proximity, the City of South Bend and/or the St. Joseph County Health Department may require connection to sanitary sewer upon failure of the existing on-site system. The City of South Bend Division of Engineering & Public Construction commented that sanitary sewer is available. City Plan, City of South Bend, Indiana (November 2006): Objective LU 2.2: Pursue a mix of land uses along major corridors and other locations identified on the Future Land Use Map. Objective H 2.6: Encourage homeowners to maintain their homes. Objective ED 1.2: Encourage the reuse of abandoned and underutilized land and structures. City Plan, City of South Bend, Indiana (November 2006). The Future Land Use Map shows this area as Commercial along the west side of U.S. 31 and Mixed Use along the east side of U.S. 31. The approximate 0.60 acre site is currently occupied by a vacant one-story residential structure and is the southernmost property along U.S. 31 South within the City of South Bend. The adjacent land uses along U.S. 31 south of Kern Road are primarily low-density rural residential (greater than 0.5 acre) or agricultural. The "A" Agricultural District within the County begins approximately one-half mile to the south. The most desirable use of the property is to continue to use the existing structure as a residence until such time that it can be included into a larger development project. As previously noted, this site was a part of a larger annexation and rezoning petition which included over 75 acres of land on the west side of U.S. 31 south of Kern Road. Surrounding property values should not be negatively affected since the proposed rezoning will revert the site to the prior residential zoning and use. The proposed use is responsible growth and development since it lies within a predominantly low-density residential and agricultural area. Since the proposed large scale commercial development was never constructed, the reversion of this individual property to single-family residential is compatible with the existing adjacent land uses. Based on information available prior to the public hearing, the Staff recommends that the petition be sent to the Common Council with a favorable recommendation. This rezoning will allow for an existing vacant single-family structure to be renovated and used as a single-family residence. Single-family residential is compatible with the adjacent low-density residential and agricultural uses.

JANELL MILLER: I reside at 18199 Stonebridge. I am the Site Property Manager for the petitioners. Promised Land LLC purchased this property. It was listed as a residential property

on the MLS sheet when they bought the property. They bought this property not knowing that it was a commercial property. They bought it and want to fix it up and try to sell it as a residential property. We need to be able to pull some permits to renovate it so they need to get this rezoned. If they do at some time want to list it for sale, they feel it would be better to list it as residential.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance to this petition.

STAFF RECOMMENDATION

JOHN BYORNI: Based on information available prior to the public hearing, the staff recommends that this petition be sent to the to the Common Council with a favorable recommendation. This rezoning will allow for an existing vacant single-family structure to be renovated and used as a single-family residence. Single-family residential is compatible with the adjacent low-density residential and agricultural uses.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Robert Hawley and unanimously carried, the proposed ordinance of Promised Land, LLC to zone from CB Community Business District to SF1 Single Family and Two Family District, property located at 7233 U.S. 31 South, City of South Bend is sent to the Common Council with a favorable recommendation. This rezoning will allow for an existing vacant single-family structure to be renovated and used as a single-family residence. Single-family residential is compatible with the adjacent low-density residential and agricultural uses.

- B. A proposed ordinance of Illinois Development Company to zone from M Manufacturing Industrial District to M Manufacturing Industrial District, property located at 54400 Block of Smilax Road, St. Joseph County - APC # 2570-10

CHRISTA NAYDER: The petitioner is requesting a zone change from M Manufacturing Industrial District to M Manufacturing Industrial District to allow permitted manufacturing uses. On site, there are no buildings, but a railroad spur runs diagonally through the site. To the north are Five Star Sheets and Just Packaging zoned M Manufacturing Industrial District. To the east is farmland zoned A Agricultural District. To the south is an active railroad corridor (unzoned) and farmland zoned A Agricultural District. To the west across Smilax is Unifrax zoned M Manufacturing Industrial District. The M: Manufacturing Industrial District is established to provide for development of manufacturing and processing facilities or facilities which may require substantial amounts of outdoor storage or outdoor operations. Permitted uses in this

district tend to generate heavy traffic and require extensive community facilities. Permitted uses in this district may require extensive amounts of outdoor storage or outdoor operations. The permitted uses provided for in this district should be separated from residential districts or low intensity commercial/mixed use districts by less intense industrial districts. The site is 25.88 acres. A recycling center is proposed. There are also two accessory buildings, one at 5400 square feet and the other at 8000 square feet. Buildings cover 1.73% of the site. The 32 parking spaces along with drives and a large staging area cover approximately 13% of the site. The remaining 85% is open space. In addition to the landscaping, a 10' solid concrete fence is proposed along the southern lot line from Smilax Road east to just past the recycling center. There is one access from Smilax Road. In 1996, a rezoning covering this site and the site to the north was approved as M Manufacturing Industrial District. The final site plan did not address this use on the southern portion. Smilax Road has two lanes. The site plan indicates the buildings will be coNENcted to municipal water and sewer. The Health Department notes that a resource recovery facility will be subject to its regulation under Chapter 52 Surface and Groundwater Protection of the St. Joseph County Code. The regulations will address; the capacity of the facility, regulated substances, activities performed on the concrete pad, surface water drainage, providing a carbon filtration system in the retention basins, and how liquid wastes will be stored and released. Comprehensive Plan for South Bend and St. Joseph County, Indiana (April 2002) Goal 2: Encourage the economic development of the County and its municipalities. Objective A: Ensure that the suitable areas are available for future industrial development. Policy iii: Heavy industrial uses should have frontal access to State highways and/or major arterial streets. These uses will also have access to railroad lines. Topography shall have less than 3% slope. Site will have full access to municipal water, wastewater, and sanitation services. This area has been designated an Industrial Growth Area on the Future Land Use Map. Several parcels in this area have been rezoned to Manufacturing in past years including the current site. Smilax Road offers direct access to US 20 and the railroad tracks will provide the opportunity for bulk receiving and shipping of materials. The most desirable use is manufacturing, which has been contemplated since 1996. The property values of the residential properties around Center and Lynn Streets should be protected with the buffering and landscaping being proposed. It is responsible development and growth to allow the balance of this parcel to be developed as manufacturing. Based on information available prior to the public hearing, the staff recommends the petition be sent to the County Council with a favorable recommendation subject to Health Department comments. This rezoning will meet both the goals of the policy plan and is in conformance with the future land use map. The infrastructure is in place to support industrial uses at their location.

STEPHEN STUDER: I am an attorney for Kreig, Devault located at 4101 Edison Lakes Parkway, Mishawaka. I represent the owner, Illinois Development Company. We are here today to rezone from M Manufacturing to M Manufacturing to allow permitted manufacturing uses. The contingent purchaser is interested in developing a state of the art recycling center that will result in a multimillion dollar investment in the county including eighteen new jobs immediately and an additional twelve jobs within the next two years. For those who may question, this is the same recycling center that was approved by the City of South Bend. The reason for the site location change is due to the substantial benefits by this particular property. It is twice the size as the site it was approved to go on. In addition, it also is a part of the land use plan designated as industrial use in the future. It has very easy access to U.S. 20. U.S. 20 is right off of Smilax Road. Most importantly, however, there is already an existing rail spur which will allow the

company to get rid of waste recycle which will reduce the number of trucks. The Health Department provided a list of eight comments. The contingent purchaser agrees with all of those. The Health Department asked that those comments be placed on the site plan at the time it is submitted. The contingent purchaser agreed to that. We respectfully ask for this to be sent to the County Council with a favorable recommendation.

IN FAVOR

MARC NELSON: I am with the St. Joseph County Health Department with offices located on the 9th floor of the County City Building. I think staff has adequately summarized the intent of the Health Department pertaining to comments on this particular project, and I just want to say to the Commission that we think this a good location for the shredder and crusher. The potential for groundwater contamination, so the Health Department has come up with requirements on the facilities that the applicant has agreed to as Mr. Studer said. So with that understanding, the Health Department has no objections to the proposed petition.

REMONSTRANCE

There was no one present to speak in remonstrance to this petition.

STAFF RECOMMENDATION

JOHN BYORNI: Based on information available prior to the public hearing, the staff recommends that this petition be sent to the County Council with a favorable recommendation, subject to Health Department comments. This rezoning will meet both the goals of the policy plan and is in conformance with the future land use map. The infrastructure is in place to support industrial uses at their location.

DAN BREWER: Mr. Studer said this had already been passed by the City of South Bend. Was that at another location? Or did I misunderstand?

CHRISTA NAYDER: It was at another location within the City limits.

DAN BREWER: So this is being relocated?

CHRISTA NAYDER: Correct. It did not come before your board. It came through as a special exception before the Board of Zoning Appeals (BZA) and then the City Council.

DAN BREWER: So that project is now located to this site?

CHRISTA NAYDER: Correct.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Donna Chamblee and unanimously carried, the proposed ordinance of Illinois Development

Company to zone from M Manufacturing Industrial District to M Manufacturing Industrial District, property located at 54400 Block of Smilax Road, St. Joseph County is sent to the County Council with a favorable recommendation. This rezoning will meet both the goals of the policy plan and is in conformance with the future land use map. The infrastructure is in place to support industrial uses at their location.

- C. A proposed ordinance of Greater South Bend Housing, Inc. to zone from SF2 Single Family and Two Family District to PUD Planned Unit Development District, property located at 101 N. Kenmore Street, City of South Bend - APC # 2571-10

DEREK SPIER: The petitioner is requesting a zone change from SF2 Single Family and Two Family District to PUD Planned Unit Development District to allow up to 24 one-story garden apartment or duplex units for senior citizens, an accessory building housing a community room, cooking facilities, tenant laundry room and office, and a yard equipment storage shed. On site is a vacant naturally vegetated open area with a small patch of trees within the southern half of the site. Tree rows are located along North Kenmore Street and along the adjacent alleys to the north and west. To the north are single-family residences zoned SF2 Single Family & Two Family District. To the east across North Kenmore Street are single-family residences, including an in-home daycare facility, zoned SF2 Single Family & Two Family District, and a church zoned MU Mixed Use District. To the south across Washington Street are the LaSalle Park Homes, which is a multi-family residential apartment complex zoned MF2 High-Density Multi-Family District. To the west are single-family residences zoned SF2 Single Family & Two Family District. The PUD District is intended to: encourage creativity and innovations in the design of developments, provide for more efficient use of land, permit special consideration of property with outstanding natural or topographical features; facilitate use of the most appropriate construction techniques in the development of land; and, provide for an individual land use not otherwise specified elsewhere in the Ordinance. The PUD District encourages imaginative uses of open space, promotes high standards in design and construction, and furthers the purposes of the Comprehensive Plan.

The PUD District is not intended for the development of residential subdivisions or other developments which are provided for as a matter of right within any district of the Ordinance. The site is 1.53 acres (66,647 square foot). The preliminary site plan includes six separate one-story apartment buildings with 24 units, a community building, and a maintenance building. A HUD grant application is being submitted for this project so the exact number of units may be less than 24. Buildings cover 18,405 square foot or 28% of the site. The proposed density is 15.69 dwelling units per acre with an allowable maximum density of 16 units per acre. The rental units will be both age and income restricted. Hard surfaces including the parking areas, drives, and sidewalks cover 17,720 or 27% of the site. The remaining 45% is open space and landscaped areas. A total of 18 parking spaces are proposed which equates to 0.75 spaces per unit. Several development regulations relating to minimum project frontage, minimum setbacks, allowable encroachments, maximum building coverage, and minimum open space are included on the site plan. A revised site plan was submitted to our office after our staff report was written. This revised plan only incorporates changes to the proposed landscaping along Kenmore Street, which now includes over story trees within the right-of-way. All development standards not

specifically indicated on the site plan shall conform with the MF1 Urban Corridor Multifamily District. The LaSalle Park area is predominantly a single-family residential neighborhood. According to historical aerial maps, a single-family residence fronting West Washington Street existed on this site prior to 1966. This residence was razed after 2008. The LaSalle Park Homes multi-family residential apartment complex located south of the site was constructed between 1966 and 1971. The nearby Ralph C. Ellison Homes multi-family apartment building located at the northwest corner of Washington and Falcon Street was constructed in 2008. This apartment building is similar to the proposed use in this petition in that it provides 42 units which are age and income restricted. Both West Washington and North Kenmore Streets are local two-lane roads. Existing alleys border the site to the west and to the north. The site will be served with municipal water and sanitary sewer. The City of South Bend / St. Joseph County Building Department requested a more detailed landscape plan. This was addressed with the revised preliminary site plan.

The Department of Community & Economic Development supports this rezoning petition since it is a positive investment in LaSalle Park and would meet a community need for additional pedestrian oriented senior housing units. However, numerous comments were given which focused on mitigating any potential negative impacts on surrounding properties. These comments related to the project density, building design and access, and landscaping and screening along the west property line and along Kenmore Street. Many of these concerns were addressed with the revised preliminary site plan. City Plan, City of South Bend, Indiana (November 2006) Objective LU 2.1: Encourage developers to use planned unit and traditional neighborhood development models to promote land use compatibility in future developments. Objective H 1.1: Encourage residential developments to contain a mix of housing types, densities, price ranges, and amenities. H 1.2: Encourage rental housing for all income levels throughout the city. Objective H 1.4: Encourage the development of a variety of housing types and care choices for seniors and disabled persons. City Plan, City of South Bend, Indiana (November 2006) The Future Land Use Plan identifies this area as medium density residential (defined as 6-12 units per acre). The site is currently vacant and lies within a primarily single-family and multi-family residential area. The LaSalle Park Homes multi-family residential development is located immediately to the south and to the east along the west side of North Kenmore Street. This development includes 150 dwelling units on approximately 12.9 acres (11.6 units per acre). The Ralph C. Ellison senior apartment facility is located to the east at the northwest corner of Washington Street and North Kenmore Street. This facility includes 42 dwelling units on approximately 1 acre (42 units per acre). The combined density of both these multi-family residential developments is 13.8 units per acre. The most desirable use of the property is single-family or medium density residential. The surrounding property values should not be affected by the approval of this rezoning. It is responsible growth and development to allow for compatible residential developments within this single and multi-family residential area. Based on information available prior to the public hearing, the Staff recommends that this petition be sent to the Common Council with a favorable recommendation. The development of a vacant property is a positive investment and a compatible use within this single-family and multi-family residential area. The combined density of the two existing multi-family projects, together with the proposed project, represents a total net density of 14 dwelling units per acre, though two more than what is recommended by City Plan. Over the proposed 1.5 acre project,

this increased density represents an additional 3 units, an increase which will not have a negative impact on the neighborhood.

We received a letter from Councilman Henry Davis in opposition to this rezoning. Councilman Davis represents this district.

JOHN DELEE: The .75 parking requirement, is that the requirement of the ordinance? Or is that different than what is allowed?

JOHN BYORNI: In a normal multi-family situation you would have two parking spaces per unit. As a PUD, they can propose whatever standard they want to. If the Plan Commission thinks its reasonable then you can recommend favorably on that.

DONNA CHAMBLEE: Is it the expectation that the residence would use public transportation?

JOHN BYORNI: I think the petitioner will bring that out in the presentation.

BILL HUNT: I reside at 1433 Clayton Drive, South Bend. I am here representing the ownership of the property as president of the Board of Director's of Greater South Bend Housing. Greater South Bend Housing is a not for profit corporation. It was formed in 1968 with a mission to meet the need for clean, safe, high quality affordable housing for low to moderate income individuals and families in the greater South Bend area. With a board of twenty one volunteers from a variety of backgrounds, it is the sponsor ownership organization of LaSalle Park Homes and the William C. Ellison residence which are in the area of West Washington and Falcon Streets as is the subject property. LaSalle Park Homes, which consists of one hundred and fifty, one, two, three and four bedroom apartments, was developed with the help of several community churches and committed community volunteers in the late 60's. The Ellison residence was developed with a HUD grant under Section 202 of the Amended Federal Housing Act of 1959. The three-story Ellison residence contains forty-two one bedroom apartments for low-income residents age sixty two or over. That was completed in 2006. Both properties receive rent subsidies under their prospective guidelines based on the residents income, and both currently have waiting lists for housing. Recognizing that the grant program under Section 202 may be coming to an end, we are seeking the zoning change so that when the last application announcement occurs we will be able to apply for a grant to be able to build the twenty four garden style, single story, street level entrance, one bedroom apartments again for qualified residence age 62 or over. Twenty four apartments will continue to meet the need for affordable housing. We are continuing to look for other opportunities in other areas since today LaSalle Park Homes has over one hundred applicants on our waiting list for one hundred and fifty apartments that are one hundred percent occupied. The Ellison residence also has a waiting list of several applicants. We have spoken to the current LaSalle residents that meet the age 62 requirement as well as other applicants age 62 or over that would prefer the garden style homes to the multi-story building. Many of the current qualified residents would move into the new apartments, freeing up the LaSalle Apartments for others on our waiting list. As part of this process, we had a few informational meetings in November at the Charles Black Center seeking input from LaSalle and Ellison residents. We also invited the immediate neighbors of the subject property. A follow up presentation was made in November at the LaSalle Park Neighborhood

Association meeting. Real Estate Management Corporation is the firm that Greater South Bend Housing employs professionally to manage. Brian Harding with Real Estate Management has some more information about the process. Greg Kil, from Kil Architecture will talk about design options to conclude our presentation.

BRIAN HARDING: I reside at 50610 Canyon Lane, Granger. I represent Real Estate Management Corporation. We are the third party managing agent for LaSalle Park Homes, the William Ellison residence and this proposed Kenmore Garden Homes. I want to share what Bill had referenced that if this property is in fact rezoned and HUD agrees to actually fund this project, which they have not yet done, Greater South Bend Housing is proposing to build twenty four units to make an investment of almost two million dollars in the neighborhood for low income seniors. There are twenty current seniors residing at LaSalle Park Homes that would in fact be interested in moving into these units to free them for others to move into the LaSalle Park Homes property. There are also twelve individuals that would prefer not to apply to be on the waiting list at the Ellison building as they are not interested in the high- rise but a street level entrance. Therefore, demand is high for these units from individuals within the neighborhood. My representing Real Estate Management (RMC) as the managing agent, we believe it would be in the neighborhood's best interest to have a managing agent that is within close proximity of the proposed project. We manage the LaSalle property and the Ellison property directly across the street. There is some efficiency in management, maintenance and security issues given that we also employ South Bend police officers to patrol these grounds to offset any problems. RMC has a solid management, solid record of effective management with like properties, and we believe we have good relations with neighbors in the area. We ensure open communication with them, and we believe we have a successful project that would have a positive impact on the neighborhood. I have two letters that I was hoping to submit, given there were two individuals that were unable to attend that wanted to show they were in favor of the project.

GREG KIL: Our office is located at 1126 Lincoln Way East, South Bend. As staff has indicated the project is a maximum of twenty four units. Our previous site plan was twenty six so we took some comments from staff and adjusted that. The density may be slightly higher than what the plan recommends. It would be at least compatible with the neighborhood given the fact that adjacent blocks around are single-family residential. Unlike the Ellison residence which staff had mentioned is A similar, 202 project which is essentially a one bedroom unit, with a maximum square footage of 540 square feet. These will also be one bedroom, 540 square feet, but one story at-grade entrance, garden style apartments. We took some of the comments from the residents in the area that are on the waiting list for this project and incorporated some of those comments into the design of the site plan and the architecture of the buildings. Unlike the LaSalle Park Homes project, which was designed and built in the 60's and 70's, these buildings will have a little less institutional look, steeper pitch roof lines, and pronounced front porch lines. One of the comments was that they wanted to spend some time out on the front porch as opposed to a back patio. There are back doors that would provide access from the back side of the building. We want to make sure there was a street presence from Kenmore and Washington Street. We feel that that is very compatible with the scale and the nature of the adjacent neighborhood. It provides an opportunity for a higher use of accessibility in terms of the design of units themselves. Even though 62 and older is the age restriction, some of the residents have issues with arthritis. Some with walkers and wheelchair bound live in these units. There would

be accessible units. All units will be adaptable, adding grab bars. Door widths will be such that a wheelchair could be accommodated. One thing I want to touch on in terms of the parking, we designed 0.5 parking spaces per unit mainly because historical data from the LaSalle Park Homes project. It is probably less than half a unit would drive a car. So we feel that public transportation would be used, also allowing for visitors for the on-site street parking.

ROBERT HAWLEY: Undoubtly, you have looked at the safety aspect with it being a single story. Could you address that as far as safety is concerned?

GREG KIL: One of the things that we have done is you have a fence that goes along the alley side. We didn't access the parking from the alley sides. We access them from Kenmore Street. There is a fence that would go along the alley and then coNENct up back to the building, so there will be less cut through traffic. That's one of the issues. We do think that visibility is important. So the landscaping design will be higher trees for shade and to meet the landscaping ordinance but not to provide blocking views and to address those aspects along with the screening along the west side alley and to provide some kind of lower shrubs to buffer and soften the neighbors to the west.

ANN PUZZELLO: Since this is a PUD, is the age of the residents expected in the PUD as part of the commitments?

GREG KIL: I suppose it is, and the one thing with the HUD 202 project is that the age restriction is 62. Most of the residents are females and there are some single gentlemen.

ROBERT HAWLEY: Someone mentioned funding. What are we looking at funding wise? What is the time frame on that? How does that work?

BRIAN HARDING: As for the funding, this is a HUD 202 project, which is a senior project ages 62 or over. They also have to meet income requirements. The notice of funding announcement has not yet been issued for 2010 from HUD. We expect that to occur in January or February. From there, we would have ninety days to apply and then ninety days to grant the funds. So it would be six months before we would know anything. We would be given six months to obtain permits and things and then another year to build. So we are looking at two years from now that this could potentially be open, and that would be if, and only if, HUD chose to approve our application. We have a strong history with them. They have not released a number amount yet.

IN FAVOR

MARY JOHNSON: I reside at 215 N. Falcon Street. I have been staying there for four years and it is very beautiful and I love it. I have transportation there. We can have our own garden, and the people there get along really well, so I hope this does go through.

DENISE JONES: I reside at 142 S. Falcon Street. I am for this project too because they really are helping the seniors. I am not that age yet, but I would like to participate in something like

that. I do live at LaSalle Park Homes right now and have been for eleven years. Any project that they come up with seems to be working.

WALTER TOBAR: I reside 3647 W. Jefferson Blvd. I have lived there for approximately ten years. I approve of the project.

REMONSTRANCE

WENDALL JOHNSON: I reside at 305 S. Falcon. I have lived there for twenty years, I live just up the street from LaSalle Park Homes. In recent weeks or months, I have experienced many issues up and down the Falcon Street area. There have been articles in the paper talking about the things that have been going on with youth, etc. and things being out of control at 3:00 or 4:00 in the morning. I don't live in Granger, I live on Falcon Street. LaSalle Park Homes has been there since 1968 since the riot and the reconstruction of South Bend in hopes to redevelop that area which really never got off the ground. LaSalle Park Homes was originally built as temporary housing. It still continues in that manner as slab type apartments, two stories. LaSalle Park Homes in the past had been a pain. Yes, management has stepped up to the plate after much criticism as to how they manage their people. You will see that the people that came to this podium are African American, low income. We are harbored in that area. The west end of South Bend is saturated with low income housing, Section 8, Western Manor, LaSalle Park Homes, Mayflower, LaSalle Park Square off of Lincoln Way. It is saturated low income housing. When I look at you, I do not see a representation of what is out there. My average income is \$95,000 a year, I work at IN/TEK, and I live at 305 S. Falcon Street. Why is that? Years ago, I moved back to give back. I grew up in this community. I grew up on Liberty Street. I went to Harrison School and Washington School and graduated from IU business school in 1989. Ask why am I here. Many African Americans don't develop under the low income areas in which we are in. You will find that Washington High School, the scores of our schools are low, saturated in that area of low income housing. I am talking about cultivating culture of diverse development, not culturing a development of low income low performing areas. Who is LaSalle Park Incorporated? Can anyone tell me? They generate \$1.2 million dollars a year. The roofs were just replaced here in the last three years. They just got air conditioning in the last 2 years. A rosy picture they do paint. What about after 3:00 a.m. what goes on? We need development per capita income. If you keep saturating an area with low income, what business wants to come there? We don't have it. Has it not been for the desire of many Hispanics moving into the area, Western Avenue would not have been developed the way it is now. It would have died even further. When I approach you, I approach you in a business manner. I approach you as a resident, not to let this keep going on. South Bend has become the new low income housing development. Who is LaSalle Park Incorporated? Are you one of the investors? All I know is who I see in my neighborhood and all I know is who I see sitting on the panels that make decisions for my area. Keep in mind that without proper business development the area doesn't change. I am tired of shootings. I am tired of murders. I am sick of it. It is time to wake up. We are all South Bend and St. Joseph County residents. We deserve quality of life.

CHERYL PHILLIPS: I reside at 202 N. Wellington Street. I have four children, I have a daughter age 14 that can not go to the LaSalle Center because she has been jumped three times

from two people from LaSalle Park Homes. I had to go downtown and get a restraining order. This is the type of people that are living there. Should I have to go through that? No, I shouldn't. My daughter has a 3.8 GPA. She is a freshman at Washington High School; and she is doing great, but when you move them in there, they didn't explain that way they explain to us. We have a lot of single women moving into those units. True, but they are going to bring baggage. Some are going to come with grandkids because now a days grandmothers are raising their grandbabies. It is going to end up that kids living in there with grandparents. I am a grandparent and I am not going to leave a grandchild on the street. I don't knock these people for taking them in, but that is what is going to happen. The Ellison building. I see people in there that are not 65. I see people going in there that are spending the night at their dad's, grandmothers or whoever, so we don't need another one. I don't need it in my backyard. I pay my taxes. I work hard. I don't need that in my backyard, and I am begging you not to let this go through.

VEL MAXWELL: I reside at 3617 W. Washington Street. I live directly across the alley from the proposed project. I am coming here today to speak against this project. I am 59 years old and I have seen that particular piece of property, which formerly belonged to the proprietor of Wygant Floral. It was a wonderful piece of property. As a child I played on that property. Now, it is a vacant lot and I understand that there are certain people here in this room that want to make it a facility for further ghettotization of the black community. The west side has too much of these types of entities. Enough is enough. My family and other families that have seen these kinds of entities and buildings will tell you that we don't need another situation like this. As I said I am 59 years old, and I lived across the street from LaSalle Park Homes before it was built. I was here to speak against LaSalle Park Homes and Real Estate Management. They are not a great company to manage. Mr. Brain Harding, you may be a nice person, but you have site managers at LaSalle Park Homes that aren't doing their jobs and are afraid of reprisals from residents who commit crimes and who are not being dealt with. They are afraid to kick them out of the property for doing crimes against residents who live in the perimeter there. I am one of them in the last thirty days. I had to go get a restraining order in the last twelve days against a resident, who threatened me and my 84 year old mother, who is crippled. Real Estate Management didn't do anything about it. Real Estate Management did not kick the man out. The man had three police reports. Right now, I have talked to Mr. Dvorak's staff about this person, and they are considering criminal charges. But Real Estate Management didn't live up or have the guts to kick this man out. I spoke with Rod who works with Brian Harding. He told me "well, our staff seems to think, that we are not really sure what we are going to do with this thing". The point is, we have seen enough in my lifetime. I have seen LaSalle Park residents, not all of them but a minority of them. Our house has been shot at twice. They smoke their dope and come on our property across the street in the summer time. Smoke dope on my mamma's property. Throw their liquor bottles on our property. And I am telling the truth. You can't tell me I am not telling the truth. My mom and dad pay taxes. Charlie Maxwell, my father, worked with Redevelopment and was an officer for them. Real Estate Management, I think you need another agency to run LaSalle Park Homes. They don't have the guts to hold the people that live there accountable for bad behavior. Also, I would like to say that the collective image of low income housing is not conducive to helping the self esteem of a community. We have too much of this in LaSalle Park. LaSalle Park is known as the Lake. Strong sense of family, strong sense of community and of black pride. We don't have that anymore because you have had an influx

of people that come here from Chicago that are now residents. Many of them in LaSalle Park Homes. They bring their criminal attitudes, their bad behavior and nothing is being done about it. LaSalle Park Home site managers and Real Estate Management do not have the guts to stand up and hold these people accountable for their bad behavior. Some of them are terrorizing the residents who live immediately on the perimeter of that property. I am telling you what I have seen and experienced and have to clean up after them. The police come out and take a report about it and leave. How much do we have to put up with? I have a shotgun that I keep by the door now because I have some buttheads here from Chicago who live across the street from me and some young punks that live at LaSalle Park Homes that these site managers let in. They don't adequately screen them. They have gang behavior, and they are terrorizing that area. That does not hit the South Bend Tribune or Channel 22 but it happens every day. It's about time the truth be told. I am here to tell it. Real Estate Management, we need to realize that they have a long way to go. They are not here to pat themselves on the back, but they are not there yet. These crimes and behaviors have to be dealt with. I am against this. We don't need anymore of these entities in this community because it is going to lead to more problems. We need single family homes. Affordable homes like what they are doing with the Habitat for Humanity homes on the north end of town. I would like to see a row of them, where it will increase the tax base and the community value and reestablish and reconnect with the sense of community that LaSalle Park has traditionally had these last sixty years. If you put another project there that's enough, too much and we don't need it.

MARILIN EASTON: 206 N. Wellington, South Bend. I just want to say that I am against the proposal. I just feel like it should not take place.

REBUTTAL:

BILL HUNT: We do have confidence in our managing agent. We follow strict guidelines when we receive an application for both of our developments. We are continually under review by reviewing agencies to make sure those applications are complete, that the residents qualify for the housing and that the apartments are occupied the way they were designed to. We have addressed over the years the neighborhood with which our developments occur. I would like to say that other members of our board have also talked to other residents with the situation of crime in the immediate area as well as throughout the City of South Bend. Crime exists in this area and in other areas in South Bend. When a crime occurs, that person is dealt with and a process of eviction not only for crimes but also for rules violated. Single family homes do not have the restrictions and guidelines that we have to follow in our managed properties.

JACK MELL: Are you saying that what the people have said so far against what you have said, none of that is true?

BILL HUNT: I would say that it is true that there are shootings in the area. That there is trash, and litter in the area. I don't know if the communities that we manage in those areas are the cause of those problems. We also see in the neighborhood, if you look at the neighborhood, a lot of vacant homes, vacant lots of homes that have been demolished. Mr. Johnson spoke of the issues along Western Avenue and the things that occur after 3:00 a.m. Those problems can not be related directly to our developments. I can't say it is not true that LaSalle Park Homes has not

been involved in something like this. I can tell you that I am confident that when the problem occurs, that our site management, Real Estate Management will deal with that along the guidelines of HUD.

JACK MELL: So what you are saying now, is when this gets built, is all these things going to change? I got to believe what the man is saying. Is it going to get worse? He is saying all these things are happening and you people are not holding up your end of the bargain.

BILL HUNT: I am not familiar with the incidents that the gentleman brought up.

JACK MELL: I read the South Bend Tribune everyday and I see some of these things that are going on. I am kind of curious as to what happens if this project gets built. What is going to change? Is anything going to change?

BILL HUNT: I think what is going to change as I look at the diagram, that there is currently a vacant lot there that exists and this development is new construction on that property. We hire off duty police officers to monitor our properties on an alternating schedule. The South Bend Police Department is fighting crimes everyday.

JOHN DELEE: There is a real need in our community by older adults that need a place to live and can't afford to live in a dilapidated old property. This property is going to be beautiful and will take care of their needs and will be at a price that they can afford.

STAFF RECOMMENDATION

JOHN BYORNI: Based on information available prior to the public hearing, the staff recommends that this petition be sent to the Common Council with a favorable recommendation. The development of a vacant property is a positive investment and a compatible use within this single-family and multi-family residential area. The combined density of the two existing multi-family projects, together with the proposed project, represents a total net density of 14 dwelling units per acre, though two more than what is recommended by City Plan. Over the proposed 1.5 acre project, this increased density represents an additional 3 units, an increase which will not have a negative impact on the neighborhood.

A motion was made by John DeLee and seconded by Donna Chamblee to forward the petition to the Common Council with a favorable recommendation but the motion failed to carry.

DAN BREWER: I am a little troubled by the proposal. Our role here as a planning commission is to assess a proposed project to try to determine if it is in line with the City Plan and adjoining properties. I don't know if the City Plan addresses some of the issues that the remonstrators have raised. That is how detrimental is it to the community if we have projects developed that concentrate so much low income housing in one area. I think we have a similar problem on South Michigan Street for instance. I respect the staff and their conclusion that this fits into the City Plan. I am concerned by the points made by remonstrators.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the proposed ordinance of Greater South Bend Housing, Inc. to zone from SF2 Single Family and Two Family District to PUD Planned Unit Development District, property located at 101 N. Kenmore Street, City of South Bend is sent to the Common Council with no recommendation.

2. Final Site Plans:

- A. A Final Site Plan for Legacy Square Development to PUD Planned Unit Development, property located at the northwest corner of Sorin Street and Notre Dame Avenue, City of South Bend. - APC # 2443-07FSP

JOHN BYORNI: The purpose of this public hearing is so that the Area Plan Commission can render a decision of approval or denial of secondary approval of the Planned Unit Development known as Legacy Square, APC 2443-07. Section 21-05 of the South Bend Zoning Ordinance regulates Planned Unit Developments. Sub-section (c) (5) (C) gives the Executive Director the authority to grant or deny secondary approval or to refer it to the Area Plan Commission for review and determination.

Section 21-05 does not directly address the type of hearing that the Commission should conduct when considering granting or denying secondary approval. However, in the case where the Executive Director's decision on secondary approval is appealed to the Commission, then Section 21-05 requires that the Commission conduct a public hearing. The public hearing shall be de novo, in the same manner as though the application was originally filed with the Area Plan Commission. We have published notice of this public hearing as well as sent notice to those property owners within 300 feet.

The Commission may issue secondary approval only upon a finding that:

- i. the plans submitted for *secondary approval* satisfy the *permitted uses* and *development standards* specified in the *PUD District Ordinance* establishing such *PUD District*;
- ii. the plans submitted for *secondary approval* accomplish the intent set forth in Section 21-05 (a), and,
- iii. the plans submitted for *secondary approval* provide for the protection or provision of the site features and amenities outlined in Section 21-05 (c) (1).

In preparation for this public hearing, I previously sent you a copy of Section 21-05 of the South Bend Zoning Ordinance so that you could become familiar with the requirements for approval.

KARL KING: Just so everyone understands, this is a secondary approval of the site plan that was previously approved. We need to see if the current site plan conforms to the one that was originally submitted. This is a decision that could have been made by the Executive Director of the Plan Commission in accordance with our local ordinances. The Plan Commission Director

and the Commission has decided that the full Commission would make this decision. It is not a process that requires a public hearing, but we have decided to have a public hearing because we know that there are strong feelings about it and want to make sure that the public has an opportunity to be heard before the Plan Commission makes its decision. We have a room full of people even though people that were concerned about our previous petition left, we still have a room full. I know there are many that want to speak, and I ask you to listen carefully to what is being presented. If you intend to speak, think carefully about what you are going to say and try to do it in a manner that allows plenty of time for others to speak as well. Part of the audience today consists of people, who are members of, or supporters of the Northeast Neighborhood Revitalization Organization (NNRO), which, I know is going to be speaking against this approval. I want to disclose that I am a member of the Board of the NNRO. I am a volunteer appointed by Mayor Luecke as one of two representatives of the City on that board. I have no ownership, interest and receive no compensation for it. So technically, I would not have a conflict of interest that would prevent me from voting on this matter. However, it seems to me that in the interest of avoiding any possible appearance of impropriety or bias on my part I will not be participating in the discussion nor will I vote on this matter. I do intend to preside over the public hearing. I will not be making any remarks, and I will not be voting on this today.

ANN PUZZELLO: I also am a member of the NNRO, and I had not thought of not voting because it is not an issue that will affect me personally, financially or in any other way, so I would like to take part in the discussion and vote on the issue.

CHRISTA NAYDER: This petition was originally heard at the July 17, 2007. Area Plan Commission meeting as a proposed ordinance and site development plan of Robert E. Dunbar, Jr. and Michelle and Michael Alfrey to zone from SF2 Single Family and Two Family District to PUD Planned Unit Development District. It was tabled until the August 21, 2007. Area Plan Commission meeting, when it was given a favorable recommendation. It was approved by the Common Council on September 10, 2007, as 32-unit residential dwelling unit project. This is now before the Area Plan Commission for consideration of the Final Site Plan. The zoning ordinance states in Section 21-05, in part, "if, in the sole discretion of the Executive Director, there are questions regarding how the application or secondary approval fulfills the intent of the PUD District ordinance or how the secondary approval expresses in detailed terms the general terms approved as part of the preliminary plan and zone map change to the PUD District, the Executive Director may refer the proposed secondary approval to the Area Plan Commission for review and determination."

The Commission may issue secondary approval only upon a finding that:

- i. the plans submitted for secondary approval satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District;
- ii. the plans submitted for secondary approval accomplish the intent set forth in Section 21-05 (a);
- iii. the plans submitted for secondary approval provide for the protection or provision of the site features and amenities outlined in Section 21-05 (c) (1).

JAMES A. MASTERS: My office is located at 211 W. Washington Street, Suite 1800. I am here to speak on behalf of Legacy Square Development, LLC. which is the owner and developer of the subject properties which is located at the northwest corner of Notre Dame Avenue and Sorin Street. This property was rezoned in September 2007 by unanimous action by the South Bend Common Council based on a favorable recommendation from this Commission. The rezoning was from SF2 Single Family and Two Family District to the PUD Planned Unit Development District to allow for the construction of 32 attached residential units. The foundation permit was issued by the South Bend Building Commissioner with the authorization of the Executive Director of this Commission. The foundation has been constructed. A final building permit has not been issued. The final site plan has not yet been approved. According to the South Bend Zoning Ordinance Section 21-05 (c)(5) (C), the Executive Director of this Commission has referred the proposed final site plan to you for review and determination. In the documents that I gave, you Mr. Byorni's November 12, 2010, letter to Mr. Danch indicating his referral of the final site plan to this Commission is provided to you. I am aware that this is the first time that this Commission has been asked to review and to approve a final site plan for a PUD at public hearing. This is not like deciding whether to recommend approval of a rezoning. The rezoning has been approved by the South Bend Common Council. Your review of this case is limited to determining whether the proposed final site plan meets the requirements of the PUD Ordinance; and if it does not, then you must tell us why not. That is all. That is the extent of this hearing. I point out, that in the accordance with Section 21- 05 (c)(5) (C) of the Zoning Ordinance, the Executive Director may refer the final site plan to you for approval if there are questions regarding how the application of the final site plan fulfills the intent of the PUD district ordinance, or how the final site plan expresses in detail terms the general terms approved as part of the preliminary plan and the zoning map. A copy of the ordinance is in the packet and I have highlighted the relevant sections. According to Section 21- 05 (c)(5)(F) either the Executive Director or the Commission may issue a final site plan approval only upon finding that the plans submitted for the final site plan satisfy the permitted uses and the development standards specified in the PUD district ordinance. The plan submitted by the final site plan approval accomplishes the intent of Section 21- 05(a) of the PUD ordinance, and the plan submitted for final site plan approval provides for the protection or provision of the site features and amenities outlined in Section 21-05(c)(1). I understand that the Area Plan Commission staff report outlines these standards for your review. Let's take a look at each of these requirements. First, the permitted uses and development standards. The preliminary site plan, which was approved by the staff after review, shows that there will be 32 single family family attached dwelling units. You have on the screen the site on the preliminary site plan. There is data of course provided on the preliminary site plan, and I have taken excerpts of it and included it in the handout that I have given to you. You will see that in the information that would be provided in the upper left hand corner of a preliminary site plan, in paragraph seven, we state that each dwelling unit shall be placed on a legal lot of record or developed under the State Condominium Codes. Each of these 32 units is a legal condominium under Indiana Law. We also point out in the site data that would normally appear in the lower right side of the site plan, the intended use. The intended use is 32 single family residential dwelling units in a planned unit development. That is the information on the preliminary site plan. The final site plan for Legacy Square shows four three-story buildings, each containing four units in which are located two single family attached condominiums for a total of 32 single family condominiums. The information from the final site plan is also included in your packet. It is substantially the same as that was provided in the

preliminary site plan. The South Bend Building Commissioner Charles Bulot, has examined the plans for this property and has determined that the development is constructed under State of Indiana guidelines for condominiums and that a Homeowners Association has been organized under those guidelines. Building Commissioner Bulot has determined that each of the 32 single family dwellings complies with the requirements for and exists as an independent single family dwelling unit. There is an opinion letter from Mr. Bulot, dated November 8, 2010, directed to Mr. Byorni, which is included in your information packet. The submitted final site plan satisfies the permitted uses allowed under the PUD district ordinance.

Next, let's look at the development standards. Included in your materials is a copy of the ordinance approving this Planned Unit Development. The ordinance as approved allows for the construction of 32 attached residential home units. There are no special restrictions or requirements specified in the ordinance. Therefore, the PUD must comply with all the requirements of the South Bend Zoning Code. Each of these 32 units is considered a separate dwelling unit under the South Bend Zoning Code. That means that each unit may be used to house one family as that term is defined under the zoning code. That means that all occupants must be related by blood, adoption or marriage, or there can be no more than two unrelated persons occupying each dwelling unit. I will note that when this ordinance was approved for the Planned Unit Development, a staff member of the Area Plan Commission made the presentation before the Common Council. A copy of the minutes from that Council meeting are included in your packet. You will note the highlighted section that reads as follows: Mr. Nemeth: (this is Robert Nemeth then of the Area Plan Commission staff,) advised that the petitioner is requesting a zone change from SF2 Single Family and Two Family District to PUD Planned Unit Development District to allow a residential multi-tenant facility containing 32 units. Mr. Danch, who spoke on behalf of the petitioner at the zoning hearings indicated to the Council that the rezoning will allow for the construction of a multi-tenant facility. The final site plan accomplishes the intent of the PUD ordinance. There can be no mistake that when the zoning ordinance was approved unanimously by the South Bend Common Council, it was with the understanding that this project was to be a multi-tenant facility consisting of 32 attached dwelling units. Speaking in support of the petition before the Common Council, the Area Plan Commission staff told the council that the well designed single family project, although a higher density, would provide a good stable infill land use component to this part of the neighborhood. This fulfills the intent of the purpose of the PUD ordinance, which provides for more efficient uses of the land, facilitates use of the most appropriate construction techniques of the development of land, and encourages imaginative uses of open space, and promotes high standard design of construction. The third requirement of your findings that the plan submitted for final site plan approval provide for the protection or provision of the site features outlined in Section 21-05 (c)(1) are presumed not to be an issue here. Certainly, the final site plan submitted by Danch, Harner & Associates meets all requirements concerning landscaping, sidewalks, drainage and other requirements of the ordinance. Mr. Danch, who prepared the final site plan, is present to answer any questions you might have concerning the site plan.

To our knowledge there are no remaining requirements left to be complied with in order to receive final site plan approval. Included in your materials is a November 10, 2010, letter from the Area Plan Commission to Danch, Harner and Associates indicating the items required before the final site plan can be granted approval. To our knowledge all of the requirements of that

letter had been fulfilled. In addition, we have submitted to you the Affidavit of Attorney from Michael Trippel, who spoke with Mr. Byroni on behalf of Legacy Square. You will note that from Mr. Trippel's affidavit that Mr. Byorni advised him that there were no other requirements that would be necessary to approve the final site plan after submission of construction drawings approved by Building Commissioner Charles Bulot. That has been done. In speaking with Mr. Byorni myself this morning, he confirmed to me that if this Commission approves the final site plan, the Area Plan Commission will authorize the issuance of building permits tomorrow morning. All that is required is this Commission's approval of the final site plan, and because this was submitted to the Commission for approval, the signature of the Commission Chairman on the required findings of fact. So we ask for your approval of the final site plan. If I or anyone else on behalf of the petitioner can answer any of your questions, we will attempt to do so.

KARL KING: Thank you. Are there any questions for Mr. Masters?

ANN PUZZELLO: It seems to me that the size of the individual condos are very different this time from what it was previously. Is that true? What was the square footage of the condos that were proposed in 2007?

MIKE DANCH: I am with Danch, Harner & Associates with offices located at 1643 Commerce Drive, South Bend. The original site plan was done by David Sassano. It was a preliminary site plan. The building square footage when David made the presentation, he had talked about anywhere from one bedroom to four bedroom units. So in essence there wasn't an exact size at the time we submitted that preliminary site plan. What we had done as part of the PUD was submitted was we limited it to a number of units that the site plan can hold which, was 32, and that is how the approval was done. So on the original plan that was before Council, you saw a large number of buildings and large buildings, but the break down would have been one bedroom through three or four bedroom units. There were no designations. I didn't make any representations of the number because I didn't have any at that time.

ANN PUZZELLO: In the site plan that you have now, which is very confusing, what is the square footage of the units themselves, not including the common areas?

MIKE DANCH: Basically, the first floor, second and third floors, you are looking at 12,224 square feet.

ANN PUZZELLO: I mean each unit?

MIKE DANCH: Each one is, I think, 24 by about 42, somewhere in that area.

ANN PUZZELLO: These are individual units that would be one family or not more than two unrelated people?

MIKE DANCH: That is correct. The condo units.

ANN PUZZELLO: Ok 24 by 42?

MIKE DANCH: Yes.

ANN PUZZELLO: Thank you.

JOHN DELEE: The height of the original building was what?

MIKE DANCH: The height that was approved, I believe, was 42 feet. We are just under that.

JOHN DELEE: What is the height of the current one?

MIKE DANCH: These are just under 42 feet. I think they are around 40. I am not exactly sure.

JOHN DELEE: But, they are about the same height?

MIKE DANCH: Yes. That is why we put those stipulations in.

JOHN MCNAMARA: I am a little confused. Is there a common area?

MIKE DANCH: Yes.

JOHN MCNAMARA: Where?

MIKE DANCH: What we are doing is they are condominium units now.

JOHN MCNAMARA: What floor are they on?

MIKE DANCH: The common area is on the first floor.

JOHN MCNAMARA: On the first floor?

MIKE DANCH: Yes, the staff has the layout of the buildings.

JOHN MCNAMARA: So, the rest of the units have a bedroom, a kitchen and a den.

MIKE DANCH: The units themselves, John. There is a common area on the first floor. There is a condominium unit on the second and a condominium unit on the third floor. Those on the second and third floor meet all the standards per codes for a single family unit.

JOHN MCNAMARA: Ok.

MIKE DANCH: So, what happens is...

JOHN MCNAMARA: Even though there is a kitchen on the first floor, it is not habitable?

MIKE DANCH: It is a common area.

JOHN MCNAMARA: That's fine.

GERRY PHIPPS: I have not gone back and read our minutes from this the first time it was presented and then the following month when it was approved. But my recollection is that one of the issues and may be the major issue that caused it to be tabled and come back was the original plan showed units facing toward the center, and there were objection to the massing of the backs of buildings toward the back. The second plan, the one that was approved, changed the site plan to what we saw this afternoon, but showed the buildings toward the front. I am assuming that the buildings are still oriented toward the front. It seems to me that the change in layout from this plan to the one that was presented now is a return to what we objected to originally in that there are fewer buildings, larger buildings, and all massed toward the street. It seems to me to be a reason at least to say that this plan is substantially different from the original site plan that was approved.

MIKE DANCH: Actually, at the public hearings, one of the concerns was the facing of the buildings. They actually wanted the buildings facing toward the street and they had done that. They wanted them to look residential in character and that is what we did also. We added porches toward the front portion along Notre Dame Avenue and along Sorin Street. That is what was actually asked for and that is what we have here. On this final site plan, before we even submitted the final site plan, we sat down with the staff to look at it before I actually did the engineering work on the plan. The result of that was some comments came back, and they wanted us to separate the buildings. Instead of having a large, massive front on Notre Dame and Sorin Street to. Actually to work that out to make it look more residential in character, which is what we did. We did everything that the staff asked us to do. We separated the buildings by ten feet to meet the building codes. They will still have the three floors.

GERRY PHIPPS: It seems to me that if you compare the preliminary that we approved and this one, we have some of that openness and residential feel from the street.

MIKE DANCH: Actually, we have increased the open space tremendously. The buildings that Dave Sassano had come up took a lot of area of the site. He didn't have exactly how those buildings were going to be laid out. We have representations that they were going to be units that were going to be on the first, second, and third floors of the buildings that Dave had designed. There is more greenspace from the streetfronts now.

GERRY PHIPPS: More green space from the street?

MIKE DANCH: At the corners..

GERRY PHIPPS: From the preliminary that was approved?

MIKE DANCH: Yes. Remember the way that the buildings had been oriented the first time, there were driveways off Notre Dame and Sorin Street along with a masonry wall. We are taking that away as well, and there is going to just be the facades of the buildings. The massing is quite different.

DAN BREWER: You said, Mr. Masters, in your initial comments that our sole role as a Planning Commission was to determine whether or not this secondary submission that is before us now conforms with Section 21-05 of the code. I thought our role was to decide whether it conforms with what we had originally approved. Am I wrong? Or did I misunderstand you? I thought our question here was whether or not there had been changes in this newly submitted site plan that were sufficiently different than the original one that was approved to make it in effect something that required denovo review.

JAMES A. MASTERS: That is not our understanding. The standards are set out for you, and they were set out in the staff report. They are also set out in the statute, excuse me, the ordinance. You are to determine whether the plan satisfies the permitted uses, that is what the zoning code allows and the development standards specified in the PUD district. That one. Two, see if it encompasses the intent of the PUD ordinance and three, to see if the final site plan includes all the amenities and site features that are required in the PUD ordinance.

DAN BREWER: If that is true, why would we even need a preliminary plan then?

GERRY PHIPPS: I think there is confusion. There are two ordinances in question here. There is the City's Zoning Ordinance, which sets the standards by which a Planned Unit Development is approved. Our decision today is whether or not this plan meets the specific ordinance for this project that was approved by the Common Council back in 2007.

JAMES A. MASTERS: I agree with that one Mr. Phipps. That is why I included the ordinance in the submission that I gave you. As you will note in the ordinance, all the ordinance says with regard to development standards is that it is to allow for the construction of attached residential home units.

GERRY PHIPPS: That ordinance also references the preliminary site plan.

JAMES A. MASTERS: I am not sure that it references the preliminary site plan.

GERRY PHIPPS: We can ask Mitch (Heppenheimer), but that is my understanding. When a PUD ordinance is approved, a preliminary site plan is a part of that ordinance.

JAMES A. MASTERS: There is no significant difference between the final site plan and the developmental criteria were specified in the preliminary site plan. The preliminary site plan provides for 32 attached single dwelling units. After working with the staff and after listening to the staff's comments, this is what was decided upon. If you look at the preliminary site plan, that the buildings go around the entire area there including buildings that would face an alley way as well as Notre Dame Avenue and Sorin Street. What was decided upon was to move the buildings so that they are facing Notre Dame and Sorin and leave all the westerly facing area, which is adjacent to the homes on the west side, to leave that all open as open space. That is what has been done.

DONNA CHAMBLEE: Do you have elevations for this Mike (Danch), or just what we see now?

MIKE DANCH: I think there were elevations that were submitted to the staff as part of the condominium. What the staff asked us to do as part of the final site plan requirement was concerned was to form a condominium for this. And we believe that the condominium documents that they received, there are elevations with that.

DONNA CHAMBLEE: I have a fairly significant construction background, so I can pretty much figure what is going to be there. A lot of the folks don't have that. So to be able to see what would be street facing, I think would be hugely helpful.

ROBERT HAWLEY: Just for my information, are we dealing with the same owners of the property today that we were dealing with back in 2007?

MIKE DANCH: When we did the original rezoning, you actually had the owners that were selling to the developer, and now he is the one that actually owns the property. The people that were originally the petitioners when we started this, they are no longer a part of this.

GERRY PHIPPS: In the original presentation to the Plan Commission or to the Council were there representations made by the petitioner that these would not be student rental properties?

MIKE DANCH: No, there were none, Gerry.

IN FAVOR

JOHN PIRACCINI: I am with Coldwell Banker with offices at 1807 South Bend Avenue, South Bend. I was requested by Mr. Cimala and his company to do a market study of the area. For a couple of reasons, I have been extensively studying the townhome market since 2006 because I have my own townhome development in Mishawaka, and with my office a stone's throw from the University. I am pretty familiar with all the developments going on in the last five to six years. I actually walked through this neighborhood, door-to-door. As you can see in the map that I have given you, the red is the property in question here today for development. The yellow hatched areas are all either some form of rental properties or student housing of some nature. They are not owner occupied. Notre Dame owns a few pieces, where I have marked, and then there are a few commercial pieces on SR 23, South Bend Avenue, Club 23, and then the corner piece there at Notre Dame Avenue. But I did not extensively walk on the west side of Frances. Those are obviously rental properties either through tax records or by visibility. The other ones, I walked through the neighborhood. A few of the residents just south of South Bend Avenue said they would sell or lease their properties. This kind of gives you an idea of the neighborhood. The study has shown that the economy has very negatively affected the real estate market probably more than anything else that is going on today. Probably the worse in real estate history. If you talked to anyone in real estate, most have been around for twenty years will tell you that they never seen it like this. It is a complicated job market. The job market being the way it is has made it worse because we don't have professionals in large numbers moving into our area who would be a townhome/condo type buyer. Especially larger cities. The last piece of the puzzle, the area around Notre Dame, with all due respect, has absorbed all the town home market. The discretionary income, the higher income all being built right adjacent in

the area. All that is absorbing. It is the only place that has had success in the market right now. We see a really difficult market.

This property, as I told him, would probably be best at a high density like this to get your return on investment and to try to draw that potential buyer. You are seeing a lot of the area bringing in people that may not want to live here all the time. They want to buy, but maybe on a shorter term basis. I ran into the same thing in my project in Mishawaka on the river. A very nice project. It is called River Walk town homes. The same deal, high end. Finished the project in 2008. No sales. We turned into leasing. Went through the bank. The whole situation. We began to lease with options to purchase. Trying to keep the project going. My recommendation to him was that he may have to begin to lease some of these with options to purchase or lease to get some activity because you have to have activity to get these going. I had talked to Mrs. Puzzello and some of the people just to kind of get a feel. There was a real strong sentiment about single family detached, but I just don't see that market there at all. The neighborhood has got some challenges. I know the north part is trying to do some improvements. There are so many rentals in there, and some are student rentals and probably generating a lot of income. This project seemed to be the best fit. A two or three million dollar project in the area would be a nice shot in the arm. You have to get through this market a little bit further. I think the property across the street, the old funeral home there, they were coming in for a town home kind of development, and it has been on hold. I asked them, what are your plans? Do you have any plans to move further? They said no. The market is still too difficult, extreme competition. Everything is going north around Notre Dame. The bank's requirements are difficult. It is a tougher market so they would prefer to do some similar things to develop more units or something of that nature. They were not moving forward at this point. That is what got me to my recommendation that that would probably be the best route to go. That was kind of keeping in mind what some of the concerns in the area were also.

DAN PANTING: I am the president of Bright Electric located at 51285 Bittersweet Road, Granger. All I have to say here is that I have been involved with Legacy with other projects. They build quality buildings, very nice buildings, and if this project were to go, my company and employees that live in this community would benefit from it.

STEVE EMMONS: I am the construction manager with Construction Resources I have been hired by Mr. Cimala. There are 28 local construction companies that will benefit from this project. All 28 companies with the exception of one are in the immediate area of South Bend and St. Joseph County. The only one that is not is our technical people. That do our internet services. They are out of Indianapolis. That is a very small piece of the puzzle. I can also answer questions about the construction side of it. It will be all masonry exterior. The interior of the project will be custom made cabinetry. Tile surrounds the shower. Stainless steel appliances. Everything is top quality. I have done other projects in the area. I will tell you that Mr. Cimala does not stop on quality. He wants it to be nice and very well kept and done the right way.

JACK MELL: Union or non-union?

STEVE EMMONS: It is a mixture of both.

REMONSTRANCE

TIM SEXTON: I reside at 51222 Outer Drive, South Bend. I am the Associate Vice President of Public Affairs at the University of Notre Dame. I am also the current President of the Northeast Neighborhood Revitalization Organization (NNRO). I have been associated with this organization for the past ten years since its inception in 2000. Over the past three years, I have attended over 300 meetings relative to revitalization of the northeast neighborhood. Also, the NNRO is a land owner within 300 feet of the proposed project. Mr. Chairman, in an effort of not having a litany of people continuing to come up opposed to this, I will be speaking on behalf of the NNRO this evening. The next individual to come up will be Bill Stenz speaking on behalf of the Northeast Neighborhood Council. Greg Hokanen will speak on behalf of the University of Notre Dame. Dick Nussbaum, attorney for the NNRO, will conclude our portion. Looking back, giving you a brief history of the neighborhood. Ten years ago, there was little to be excited about in the northeast neighborhood. From 1970 to 2000, the neighborhood lost nearly thirty percent of its population, coupled with the decline in the percentage of owner occupied houses over the same period from 90% to 50%. In addition, the great majority of the retail left the area provider locations. Since the inception of the NNRO, a great transition has occurred in the northeast neighborhood. Our current partners on the NNRO consist of the City of South Bend, Memorial Hospital, St. Joseph's Regional Medical Center, the South Bend Clinic and the University of Notre Dame. Each one of our funding partners has representation on the board. Each one of those board members is matched with a northeast neighborhood resident. The collaboration between the two has been instrumental in this transformation. The reason for our success has been simple. We have been very focused on our goals. A safe, clean, attractive neighborhood. High quality housing, and increased single home ownership and economically and ethically diverse neighborhood, attractive, appropriate retail and commercial development. Over the past several years, through great collaboration and partnership, numerous accomplishments have occurred. The Robinson Community Learning Center opened its door and is operating, positively impacting kids and adults throughout our community. Everywhere in the PowerPoint that is in yellow are properties that the NNRO owns. We have sold 28 homes. We own 36 other lots for future single family home developments. Through the Notre Dame housing project, which is in blue, there have been 29 single family homes built to date, and the program is going extremely strong. A very long waiting list consists for people that desire single family home ownership. In the near future, (you can see where Eddy Street Commons is toward the top, down below is what is considered the triangle area,) that area where we hope to be constructing 55 single family homes up in that area. We have over 45 people on a waiting list to build single family homes in that area. John, (Piraccini) I would love to walk you through the neighborhood. Eddy Street Commons has opened and flourished in the area. One of the aspects of Eddy Street Commons-Buckingham, a Kite Development and has operated some apartments there that prohibits more than 2 unrelated individuals living in one residential unit. Down the street Innovation Park has also been open now and operating for a year. While some might think that all of our efforts have been north of State Road 23, they would be incorrect. We have plans already being developed in the Eddy Street Commons area, going down to one of our institutional partners, which is the South Bend Clinic on the corner of Colfax and Eddy Street. St. Joseph's Regional Medical Center site is being donated to St. Joseph's High School for the potential new high school location. The NNRO believes that that is going to increase the number

and interest in single family home ownership within the neighborhood. We also believe, the realignment of State Road 23, right now it is kind of a divider in our neighborhood. When it realigns and starts directing down Eddy Street, it is going to be easier for us to redevelop single family homes in that particular area.

Now I would like to talk briefly about Legacy Square. I stand before you today, extremely concerned and frustrated. I, as well as my fellow NNRO board members, at one point saw the Legacy Square project as a very positive initiative in the northeast neighborhood. Back in late 2007, a representative for Mr. Cimala, David Sassano, shared with the board the concept of this project. The project would be high end, for sale condominiums. After open communication and dialogue, a few modifications of the project occurred and a letter of support was issued by the NNRO. Increased single home ownership is one of the NNRO goals. Years went by before we heard another thing about this project. On June 16, 2010, I met with Mr. Cimala's attorney, where a new direction was presented for the Notre Dame/Sorin Street project, Legacy Square. I was asked how the NNRO would respond if this project shifted to group housing? Similar to the project Mr. Cimala developed at Legacy Village. I explained the goals of the NNRO, which I shared with you today, and stated emphatically, that the NNRO board would be opposed to such a dramatic change of direction. Moving from high end town homes to group housing would be unacceptable. Today, we are looking at a group housing project. The NNRO's opposition to this project is the same opposition we had for Buckingham, which is the organization that runs the Foundry at Eddy Street Commons. When they approached, considering a variance to the no more than two unrelated individuals living together, we were opposed to that at that time as well. Today, I give you a broad overview of the northeast neighborhood, the NNRO's efforts and our interactions with Mr. Cimala's representatives. Others, the ones that I mentioned previously, will explicitly detail why this project is group housing and how it has been marketed as such. In closing, clearly the project presented to the Area Plan Commission and supported by the NNRO in late 2007 no longer exists today.

I would like to give a copy of our most recent annual report for review.

BILL STENZ: I reside at 1020 E. Colfax Avenue, South Bend. I am the current President of the Northeast Neighborhood Council (NENC) Board and recently joined the NNRO also. Since 2007, when the original proposed Legacy Square condominium development was proposed, we have had several separate and joint meetings between the developer and his consultants and NENC and NNRO. One of the first meetings, July 9, 2007, was at our monthly NENC Board meeting. Mr. David Sassano, the architect for the developer; Mr. Mike Danch, the site planner; and Mr. Robert Cimala, the developer, presented their proposal. Part of those discussions include these comments. Mr. Cimala explained that he would like to build up to 36 luxury condos and call the area Legacy Square, since he owns Legacy Home Builders. He stated that he would market primarily to Notre Dame alumni, but was open to local professionals after board member Jean McManus asked about that market. Then board member, Don Sniegowski, asked about two or more unrelated individuals in the condos. Mr. Cimala said they would not be rented to students. Then board member, Molly Whelan, expressed concern that it is a closed community being cloistered by having the housing facing inward with no porches along the street. Board member Erin Shell also expressed concern about the housing being secluded from the rest of the neighborhood. A couple days later on July 12, the NENC Board voted to send a

letter to the Area Plan Commission not to support based on information at that July 9th meeting. Subsequently, a joint meeting between the NNRO and NENC was held on August 6, 2007, with the developers, architect, Mr. Sassano. He provided a revised site plan, and schematic elevations of what the building would look like. Because of those changes and assurances from the July 9th NENC meeting, the NENC Board did not remonstrate the petition to the Area Plan Commission. Had the NENC and neighbors known differently (the proposals of July 9th to August 6th are not what are being presented now) we would have virgously petitioned the Area Plan Commission and City Council to deny the request for the current PUD that we are looking at. Now I would like to take a brief moment, one of our neighbors, Scott Jessup, who is the director of Regional Development for the University of Notre Dame sent an e-mail and could not be here. I would like to read that before I conclude my remarks.

“Per my voice mail message today, I had some unexpected University business which has presented itself that will prevent me from attending the Area Plan Commission meeting today. I don’t want my absence to, in any way, imply I am indifferent about Legacy Square. This development and the manner which Mr. Cimala has transitioned this project from it’s original purpose (high end residential housing) to group housing targeting undergraduate student population, is contrary to all the efforts, by so many different neighborhood stakeholders, to “rebuild” the near northeast neighborhood into a true residential community. Where Mr. Cimala sees potential profit, I see my home and the homes of my neighbors. Where Mr. Cimala sees potential high density occupancy levels, I see individual families trying to raise their children. Where Mr. Cimala sees zoning technicalities to be manipulated for financial gain, I see a diverse community working together for the benefit of all. My interests and those of my neighbors, are not Mr. Cimala’s interests. We live in the neighborhood. We are trying to solve the considerable challenges caused, in large part, by absentee owners of rental properties who, like Mr. Cimala, place return on their investments above the quality of life of local residents. Enough is enough. Mr. Cimala obviously thinks that a “bait and switch” approach to the Area Plan Commission will work. He apparently thinks the Commission and the homeowners in the neighborhood, are either too unsophisticated or too unmotivated, to notice this technique. We are neither. I hope the Commission will value the interest of local homeowners and families who are trying to recreate a vibrant community, above those of an Illinois-based developer.”

Scott is one of the new owners of a house on Corby and Notre Dame Avenue, which is north of this project.

I will now continue with my closing remarks. Since construction and underground utility work started this fall, I received numerous enquires from neighbors with concerns about this project. During discussions and meetings with neighbors and others it became apparent that instead of high end owner occupied condominiums, these were to be marketed as group homes. Because there are a lot of members here and with respect to time constraints, I would ask for any remonstrators present to stand up and specifically those who live in the neighborhood to raise their hand. (at this time a large crowd stood up in remonstrance to this petition).

GREG HAKANEN: I am the director of Asset Management and Real Estate Development at the University of Notre Dame with offices at 910 Flanner Hall, Notre Dame, IN. As Tim mentioned, the University owns the property at 713 Notre Dame Avenue, three doors north of the subject

property. I have been a real estate professional for twenty five years, in many phases of development and construction. I am currently the University's liaison to the northeast neighborhood including Eddy Street Commons and the new homes built on the near Notre Dame Avenue. I have been a Board member of the NNRO since 2004 and currently serve as Vice President, and I am also the University's representative on the NENC. My message today is really very simple. Number one, Legacy Square is simply nothing like the 2007 plan that was endorsed by the NNRO and NENC. Number two, These units are thinly disguised four bedroom apartments. The exact opposite of what the NNRO and NENC believed they were endorsing. Finally, I nailed this project because of those foundations that I think puts everyone in an awkward position. I would like to suggest an alternative type of housing that could be built on those exact foundations with little waste of current investment. Let me speak briefly about the 2007 proposal. I agree with earlier comments that the market that was purported was that of wealthy Alumni and potentially local owner occupants. This was to be top of the line luxury housing at \$200.00 plus per square foot. The units were described as three level buildings, but individual condo units could be purchased in one, two or three level configurations ranging in size from slightly under 1,000 square feet up to 4,000 square feet building at prices ranging from \$200,000 to as high as \$800,000. This is a high end project. Other features include covered parking. If you look at the original site plan, you can see driveways that suggest cars pulling in underneath those buildings. I understood them to have private entrances. After the initial objections raised by residents and the NNRO, which really had nothing to do with use, because we were comfortable with the use that was described at that time. To his credit, Mr. Cimale, reconfigured the project to bring front doors onto the street and the NNRO was comfortable with the project and gave it's endorsement at that time. On May 28, 2010, Mr. Cimale, his attorney at that time, Steven Studer; and his Real Estate Broker, John Piraccini asked for a meeting and we met in my office. What he described at that time was an interest in developing student group housing, very similar to Legacy Village, his project on Ironwood, just north of Little Flower Church. He had a very elaborate rationale for doing so. That there was clearly a market demand for this housing and a lot of the housing that the students lived in were substandard. This would be new high quality, safe student housing, but there was absolutely no question as to what he was talking about was student group housing. I indicated at that time that this use was 180 degrees from the collective vision of the constituents and would absolutely heavily face resistance. His response was he could qualify the product under the existing PUD by altering it in certain ways, but it would be a less desirable product.

(Showing slides) This was the 2007 first plan. This was 2007 second plan, the one that was approved, and the current plan. This was the elevation offered for the housing back in 2007. You can see it has a huge amount of architectural detail and design appeal. This is the current elevation. That is the back elevation. (Slides) I show you the Legacy Village floor plan for the simple reason that it is the fore runner of this one. What you have is, this is the ground floor and what you have are common areas on the first floor. Second floor are multiple bedrooms in this case four bedrooms. Each pair of bedrooms is connected by what I would call a jack and jill bathroom. It is a shared bathroom arrangement. Each bedroom has a sink, but the two bedrooms share a commode and a shower. When you go up to the third floor, you have two more bedrooms, also connected by a jack and jill bathroom. This is the current Legacy Square plan. Again, you will see the similarities as I work through this. Shared living area is on the first floor. The areas highlighted in yellow are the areas that have been designated as condominium units.

The cut out in white are stairways and hallways. They are common areas, and therefore, not part of the individual condominium. Let's look at an individual condominium, and let's try to think about what use these might be put to. This could be, certainly a one bedroom condominium and that's what the floor plan seems to indicate. The floor plan offered by Legacy Square indicates at bedroom and a den is also labeled. I would tend to call it a living and dining room. The first thing that you notice is that it is a one bedroom apartment. You would kind of expect to enter the living and dining room area, but instead you are entering into the jack and jill bathroom. It is a shared bathroom kitchen concept next to the two rooms. So the entrance is in a funny place. If this is, in fact, a living room/dining room, you will see it is outfitted exactly the same as the bedroom. It has a closet, and it has a sink. Kind of off for a living/bedroom. I find this to be a very odd configuration. This is really intended to be a one bedroom condominium. If you look for example, ok it's a two bedroom condominium. So now the bedrooms make sense with a closet and a sink in each bedroom. Now when you go to cook dinner, you are basically cooking in the shared bathroom/kitchen combo, and you are eating in one of your bedrooms. Certainly, one of the things that you could do, someone could buy the whole building. But now you have to ask yourself, if you had the money to do that, is this the configuration you would want to buy and live in? I would offer not. For one thing, it has three bathrooms, three kitchens, (one on each floor) and it has hallways blocked off from each other. It just does not work as a three level condominium. I am having trouble seeing any condominium configuration in this plan that works. The one buyer that I can imagine for these units is an investor who would rent them to four unrelated parties. That's the most visible use that I can see. As I said in the beginning, the fact that Mr. Cimala has already installed the foundations, which I think puts everyone in an awkward position. So in an effort to solve that problem, we have done a general approach work that could work. You take the same foundation and instead of four units configured vertically, you create six units configured horizontally. What you are looking at here could be either the two units on the first floor or the second floor or the third floor. You need stairways on each side of the fire wall to access the units on the second and third floor. One of the problems with these units is that they are only seventeen feet wide. That's a tough width for a residential unit, except if you put one bedroom on each end. This solves that problem by basically making a double wide. Now you have thirty-four feet this way and forty-two or forty-three and a half feet length wise. That creates a unit after you have taken out the stairway. By my calculation, you would create about a 1,200 to 1,300 square foot one level condominium that I think would be nicely laid out and would appeal to young professionals, employees of the University of Notre Dame, and even young families, who might like to have a unit to own and purchase in this location. Lastly, I give you the floor plan for the City Homes, which is a three level, condominium unit offered at Eddy Street Commons. This is an example, if you are offering a three level condominium, that you actually want to live in. This is one example of what it might look like. The garage on the first floor, which is eluded to in the original plan. You have a den or an extra bedroom. Middle level is living room, dining room, and kitchen, and the top level is bedrooms with a master bedroom. In summary, the current Legacy Square is simply the exact opposite of what was originally proposed and endorsed by the NNRO and NENC and the University. We are opposed to this plan primarily because it will violate both the spirit and the letter of the two unrelated party restriction. These are by any reasonable standard four bedroom, three level apartments masquerading as condominium units.

RICHARD NUSSBAUM: Offices located at 210 S. Michigan Street, South Bend. Many of the points that I will be making were alluded to previously by some of the previous speakers, so I will try to do this quickly. Unlike Mr. Masters, who is my classmate and friend, who did a very good job in his presentation. His main goal was to narrow your focus as closely as possible to certain documents that he felt helped his case. The fact of the matter is that the items that he mentioned are just the tip of the iceberg with regard to this petition. We already talked a little bit about the process here. There is a preliminary plan that comes through, generally that is a very conceptual type of situation so that you get concepts. You don't get floor plans. That is one of the things that we didn't get in this. We did get certain representations as to what those floor plans might be. You then go to the secondary approval stage, which is where we are now, and your role is to review these secondary approval plans. Final plans to see if they are consistent with the preliminary plans. The fact of the matter is that they are not even close. One of the things that I mentioned before is that Mr. Masters narrowed your focus. Look at the ordinance. Look at the development standards. Take a look at what the floor plans say and make your mind up as to whether or not they match up. The Indiana Supreme Court does indicate that there can be more than just looking at the ordinance: There can be minutes and supplemental materials to the minutes as well. That is consistent with really the law here in the statutes regard to other situations. For instance, I would contend to you that a PUD district is a contract between the developer and the community. There are certain things that need to be done. If there are any questions about that, the law allows you, in accordance, to go into and see what are some of the things that went into the contract and what was the true intent of the contract when it was created. It also, in a similar fashion, a PUD ordinance is a law. It is a statute. If there are questions about the intent of that statute, then the court can look through legislative history. That is what you need to do in this particular situation. The final say so, if in fact, the secondary approval does not match up with what the preliminary plan was, it is your responsibility to tell the developer to come back and do either a plan that is consistent or to start all over.

I have placed in your materials, a timeline for this. It is Page 2, roman numeral II of your materials. Back in 2007, Mr. Bulot was not the Building Commissioner, Mr. Donald Fozo was. He was the Commissioner till November 2007. In early June or late May of 2007, (it is a little bit shady as to when that occurred). David Sassano, the architect for Mr. Cimala, met with Don Fozo and showed him some conceptual plans. It consisted of building units with two floors of bedrooms and living space and a common area. Mr. Fozo informed Sassano that the plan would require rezoning or a PUD for this type of use. In June of 2007, a petition was filed where the PUD was started. It indicated the use as multi-tenant. That particular petition lasted for about three weeks and then was revised. Multi-tenant was taken out, and residential was put in. It was that petition that was sent to the NENC for review at their meeting on July 9, 2007. During that meeting, Mr. Stenz told you what was discussed. A high end project. There was a specific representation that there would be no student housing. It was made by Mr. Cimala, the developer not an agent of his. As a result of the orientation of buildings, the NENC opposed the plan. With a follow up meeting on July 11th of the NNRO, pretty much the same thing occurred there and the NNRO was opposed as well. At the July 18th meeting, Mr. Sassano confirmed the project. If you look at the minutes and those minutes are contained in your materials and we will talk about those in a little bit. He confirmed the project description. That there would be three floors to these particular projects. Each floor would be a separate unit or they could be combined in some fashion. There was not anything in this plan about a common area. This would be high

end, and the Notre Dame alumni market would be part of the market. The preliminary approval was tabled until the August meeting. Between the July Area Plan Commission meeting and the August Area Plan Commission meeting, there was another meeting, a joint meeting between the NNRO and the NENC. At that meeting, there were discussions with regard to the orientation of the buildings. There were no discussions about two or more unrelated adults. That was taken off the table by Mr. Cimala at the previous NENC meeting. So, there was a discussion about the orientation of the buildings, and as Mr. Hakanen said, Mr. Cimala agreed to the orientation of the buildings. As a result the NENC and NNRO agreed to speak in favor of the approval of that plan. The plan was approved. It went to the City Council on September 10, 2007, and the plan was approved.

Nothing really happened for three years with regard to this particular project. However, Mr. Cimala was busy on other projects. In March of 2008 he did the Legacy Village off of Ironwood. He presented to you that project. The project he presented to you, he made no bones about, it was going to be for student housing. He described what the project would look like. It would be bedrooms above a common area. Similar to what is being proposed to you right now. Then we had the meetings in May and June that Mr. Hakanen and Mr. Sexton described. The foundations began. In addition to the foundations being put in, there were marketing materials that were sent out. There were marketing materials that were online, and there were leases that were negotiated and signed by Notre Dame students. On November 20, 2010, Mr. Bulot came to the NNRO meeting to explain his feeling that this was an appropriate project, and he brought with him Mr. Trippel and Mr. Spaulding. Mr. Trippel, at that time, was Mr. Cimala's attorney, and Mr. Spaulding, did some drawings for him. On November 16th, Mr. Cimala and Mr. Masters met with myself, Tim Sexton and Greg Hakanen. We were provided a plan at that meeting; however, the plan that was provided was not the latest plan. The latest plan was filed with the Area Plan Commission on November 12th. Let's go into a little more detail. I mentioned a meeting with Don Fozo. Mr. Fozo could not be here this evening, but he did provide a letter with his recollection of facts and circumstances of this matter. If you look at the first couple of paragraphs of this meeting, the second paragraph in particular, he indicates that the zoning classification would have to be either rezoned to a multi-family district (MF1) with a special exception for a group residence or rezone the property to a planned unit development district with a particular use spelled out. A group residence would be more than two unrelated persons. At that time, the plan showed bedrooms on the first and third floors with common area on the second. I explained to Mr. Sassano (this is Mr. Fozo talking) that this would not meet the intent of a single family residence and the second floor appears to be a party floor. Then on June 6, 2007, I mentioned that there was a petition filed for this PUD. On paragraph five of that petition, there is a question. This rezoning is requested to allow the following uses. What was put in there was multi-tenant facility. Mr. Masters mentioned that in his remarks. As I said before, either it was because of Mr. Fozo's remarks, the petition was revised on June 26, 2007. Again the same question, this rezoning requested is to allow for the following uses. a. residential development. It does not say multi-tenant development. Multi-tenant was taken out. Residential development was put in. It is the meaning of residential development that you need to look at as we move forward. This petition of June 26 was then discussed at the NENC meeting. (Tab B) In the second paragraph, you can see it says Mr. Cimala would like to build up to 36 luxury condos and call the area Legacy Square. He stated he would market primarily to Notre Dame alumni, but was open to local professionals. Later in that same paragraph, which I

have highlighted, Don Sniegowski asked about two or more unrelated individuals in a condo. Mr. Cimala said they would not be rented to students. In the next paragraph, Molly Whelan expressed some of her concerns of some of the problems in regard to the orientation, and Mr. Cimala indicated the builder said it would be primarily residential. Based upon that meeting, a letter was drafted and was submitted and is in the file of materials with the Area Plan Commission with the NENC opposing the plan. There was a meeting with the NNRO. The NNRO had similar problems. They sent out a letter as well for the July 17 meeting.

Then, we went to the July 17th Area Plan Commission meeting. There was a report that the staff made. The staff indicated that preliminary plans stated a maximum of 36 single family attached condos over 1.6 acres for a density of 21 units per acre. Mr. Sassano (Tab F) had spoke and stated the buildings themselves will be residential in character. Then he says this is a strong residential project in nature. It is high-end home ownership. The intention is condominiums. The 16 units on the plan, each one of those units could be a single-family by all three floors. It would be one person that buys the top two and one buys the small one. Eight hundred to nine hundred square feet studio condo on the ground floor, or even possibly have three flats. There are a total of 16 units that are 33 feet wide, not 17 feet wide, each accommodating three cars. What we are talking about is 36 dwelling units, 36 potential buyers. If you look at the next slide, there is the old presentation that was modified by the next slide, which was approved at the preliminary plan level. Then we went to the August 18, 2007, Area Plan Commission meeting. (Tab G) At that time, Mr. Byrd spoke, and he spoke on the representations that he knew about. This was not going to be rented to students. It was going to be high end ownership, and was going to be a potential of three single owners on each of the three floors, no common rooms. He indicated the support of the NNRO. Not only was the petition changed, (Tab H) because the original ordinance that was filed with the petition for the PUD indicated that the PUD district to allow for the construction of a multi-tenant facility. That was the original ordinance. That ordinance was substituted, and this is the substitute for it. (Tab K) This was the ordinance that was approved. This property was requested to be rezoned to the PUD district to allow for the construction of attached residential home units. Mr. Masters talked about Mr. Nemeth, where he talked about multi-tenant residential. That is not what the ordinance said. If we are going to be real strict and look at the ordinance, the ordinance says residential home units. Based upon what Mr. Cimala said himself to the NENC and what was said by Mr. Sassano, in this room to you, there could be no misunderstanding that this was not going to be rental units for two or more unrelated individuals.

If you look at Tab L, which is the Area Plan Commission minutes from March 2008 with regard to Legacy Village Mr. Cimala is very upfront with you and telling you that these are designed for student housing. He talks about a lower floor where there is common area, laundry room, kitchen and dining room. The upper floors are bedrooms. He says, "I am trying to be up front from day one, I am trying to do this the right way. I am not trying to hide anything, I will be honest with you." He then goes on to say, "I am going to own this." I think Mr. Brewer asked a question about that. "I am going to own this. I am not going to sell it. I will be honest with you. I am looking at this as a long term investment. I have no intention at all of selling. My company is going to be responsible for everything here and I am going to be the owner." At our meeting in November 2010 with Mr. Cimala, he informed us that he had sold it. The Legacy Square PUD was marketed this year and the website is in your materials. (Tab M) If you look at,

right underneath where it says Legacy Square, Legacy Square is a housing complex with 16 houses, each 2,100 square foot house has three floors, 4 bedrooms, and 2.5 bathrooms. That is what he was marketing. He also was negotiating leases. The other part that I failed to mention from the previous meeting (was that he had referenced), he said that I am going to have control over Legacy Village because I am an attorney in addition to the developer and I am going to be the one that is going to put together the leases. Well, he put these leases together for Legacy Square. These leases were effective August 21, 2010, before even the foundation permit was issued. It is here that we see what the true intent of Mr. Cimala is. He says in October 2010, the landlord shall construct 16 four bedroom single family style condominiums on the real estates described in Exhibit A. He has in the rental section, the total rent being for four students, four bedrooms, for a total rental. This lease agreement has four signature lines. We have in our possession signed leases. But to protect the identity of the students, we are not going to present those to you. Once again, I would ask that you look at the PUD, which is on the left. That was presented to you and the PUD that is presented to you now. I would also like to go back to Mr. Fozo's letter. In the final paragraph he talks about, "it appears that the concept being proposed today is consistent with what was presented to me in the summer of 2007". Mr. Fozo said it needed rezoning to a PUD to a specific use. "After reviewing the information provided me, pertaining to the rezoning hearings before the Area Plan Commission in July and August of 2007, there appears to be some misrepresentation. Also, in the advertisement of Legacy Square, the units are described as a single unit with three floors and four bedrooms. It is my opinion that this is going to create a zoning violation of having more than two unrelated people living in a residence."

I would like to conclude by addressing the three areas that Mr. Byorni in his report said that the Commission must find in order to issue this secondary approval. The first one being the plans submitted for secondary approval satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District. The ordinance says attached residential home units. It was a substitute version that took out multi-tenant units. All of the information that was presented was nothing like what is being presented to you now. Mr. Cimala is not renting to students. He is marketing to alumni and professionals. You were told by Mr. Sassano that high end ownership would be there, and would have the ability to buy all three floors. The current design is only two floors, is smaller and is not high end. It is designed for student housing. The plans for secondary approval is not consistent with the preliminary plans. The second item, the plans submitted for secondary approval accomplish the intent set forth in Section 21-05(a). Section 21-05(a) says the Planned Unit Development District is designed and intended to encourage creativity and innovation of design of development; provide for more efficient use of land; permit special considerations of property with outstanding natural or topographical features; facilitate the use in the most appropriate construction techniques in the development of land; and, provide for any individual land use not otherwise specified elsewhere in this ordinance. The PUD district encourages imaginative uses of open space for the most high standards in design and construction and furthers the purposes of the comprehensive plan. This section fails as well. The plan is not creative and innovative. It is more of the same. It is trying to shoe horn to meet technical building code standards, while more land use standards. It doesn't promote high standards in construction and design. The preliminary plan does. This plan does not. The kitchen/bathroom combination is primitive at best. Further, the purposes of the comprehensive plan since back this neighborhood and the organizations that have supported this

neighborhood's thirty years of work. The third item, the plans submitted for secondary approval provide for the protection or provision of site features and amenities outlined in Section 21-05 (c) (1). Section 21-05 (c)(1) lists about nine different features. I am just going to talk about three of them because the other ones don't apply. The fifth feature is to create an innovative residential environment. The eighth feature is utilization of building design to achieve and enhance the relationship between the development and land; and the ninth, the most important, the relationship to surrounding properties. None of these features are met. This is a negative impact on the neighborhood. This is a not a utilization of building design to achieve and enhance the relationship between the development and land. It does not create an innovative residential environment. I suggest to you ladies and gentlemen that secondary approval is evidence before you, has not met those three standards and needs to be denied. The NNRO has suggested a plan to use the foundation permits which satisfy these conditions. We are not obstructionists. We work with developers and have worked with Mr. Cimala. We supported him when he worked with us. The integrity of the process is at stake here. We can't allow individuals the opportunity to say whatever it takes to get approval, and then change the plan without any meaningful input from the public. It makes the preliminary phase meaningless and effectively takes out the Common Council with this process. We respectfully request denial of the secondary approval.

MARGUERITE TAYLOR: I reside at 714 E. Corby. I am a member of the NENC, and I am an original member of the NNRO. I am here as a resident to speak for myself and the residents that live in our area. We have really worked long and hard to bring the neighborhood back. The neighborhood does have challenges, but the neighborhood has a plan. I think most of us are tired of speculators coming in building stuff that does not match, doesn't fit. Mr. Cimala came to the NENC, and I am not going to rehash all of that. There is a plan for the neighborhood, and I just ask that you deny this request. It was really a bait and switch. It is not high end. It does not fit. He is marketing to students. We love students. They bring things to the neighborhood. It's not about the students. It's about this project. Please, we ask that you deny this project.

REV. TIMOTHY ROUSE: I reside at 605 Cherry Tree Lane. I am a South Bend Common Councilman. I asked Director John Byorni to give you a letter that I think is in your possession. I want to make some very brief comments. We have heard tonight the need for PUD districts, and it is intended to create creativity and innovations in design of developments to provide more efficient use of land. It is really a win. Win when used appropriately. What we as council members and commission members, what you see here right now is that if you find someone who wants to take advantage of that creativity, it can impede the progress we have made over the years. So, as a Common Council member, we are committed to implementing initiative and empower of residents and neighborhoods. We are partners to address neighborhood challenges as Marguerite Taylor just said in a manner that will motivate and enable them to sustain and build on our successes. I am too an original member of the NNRO, and we have come a long way in the neighborhood planning. But we must stay a course and not let instruments like this one. Mr. Cimala, to take advantage of our good nature and impede the progress that we are making. I am asking you to reject the final plan and stick to the preliminary plan, if possible.

LUELLA WEBSTER: I reside at 701 E. Howard Street, South Bend. I am a member of the NENC. I was in attendance at the meeting when Mr. Cimala told us that this would be a high end condominiums for alumni or for professionals and that he would not be leasing to students.

I just feel that he has changed completely, and has not been truthful with the neighbors or the members of the neighborhood council.

GRAYSON WARREN, JR: I reside at 1939 N. Johnson, South Bend. I am here on behalf of Olivet AME Church. The plans that we received originally are nothing like what we see now. From what I heard, it is not going to be what you originally approved. I hope you turn this request down.

AL “BUDDY” KIRSITS: I am a elected member of the City of South Bend Common Council At Large. I am also Chairman of the Zoning and Annexation Committee for the council, and I am also Chairman of the Community Campus Coalition Committee, (which many members are in here), which was formed a couple of years ago to get students from our four great universities together with representatives from those universities and residents all to make it safe for the neighbors and the students. We are real proud of the work we have done. Our last meeting was controversial, in the fact, that we were all talking about Italianate structure built on St. Peter’s Street. A little bit about the history. Some of you may have remembered some of the sweeping zoning changes that we had when Kuspa was still the Zoning and Annexation chairman. We adopted those sweeping changes pretty much universal. I was the chairman when the first PUD came about, which was the Eddy Street Commons project. A lot of people here probably came and talked about it and probably have people on both sides of the fence mad at me; but, we had many hearings right here, and we made some written compromises. Most famous one was the sprinkler system in a three and a half story condo, which the developer for Kite did not approve. He will get his money back in seven years for that. Other things to help keep it flow. The PUD was created, in my sense of understanding of it and what has been read by Mr. Nussbaum and some other people about creativity and flow, was to help remove a layer of bureaucracy of government control and defer to other experts to allow some design standards and variation and a flow of the whole project. It keeps some lawyers and developers from making as much money as they would on it, but would increase the movement of a project and keep it from moving forward. I am very proud of what we have accomplished at Eddy Commons. It is still being built out. We also have Ignition Park that we heard just a few weeks ago; and hopefully, the businesses that come out of Innovation Park are going to go there. It allows for those developers that hopefully will build there or business that go there to not have to come back to the Council repeatedly. Design standards, what we will allow, will be coming from the Plan Commission and some of those members from over at the design review committee that we have. So it tends to take us out of the picture. We as council members have always talked that we gave up a lot of responsibility with a PUD, but we defer to professionals to make the right decision. I am here to tell you that when Legacy Village came to us, it was my watch. I was chairman of the Z&A and it was my understanding of this entire project to be condominium to be owned by double-income, no kids, older folks that want to be by the University and by young families. That’s what the project was going to be. We created a residential PUD. It is a little scary that we were giving away a little control, but we thought it would be developed right. If they wanted to go with some kind of new urbanism concept, where the front doors were sliding doors, or however they would arrange it, they would have that flexibility here and change it with a site plan. What we have here is nothing at all what the Common Council approved. It is very, very different. I know we have a lot of people that have talked for the project, about the construction, and the economic times. I am telling you I envision good growth in that area, if it is done properly. If

the new St. Joseph High School goes through all the way down to the river on the other side of Jefferson Street. This would work against it. I actually lived once in one of these developments. It was Riley's Children's Hospital; and if you ever have a young child and have to have surgery down there, they have the exact same thing. A common kitchen area, common TV area, and then bedrooms all the way down. This is not what I had envisioned. I want to thank Mr. Byorni for bringing this to the full Commission. I think this shows your professionalism and the importance of this. I do have to say this will have an impact on the Council and our issues on these PUDs. We may have to look very strongly at this and quite possible never pass another PUD for a residential area if this is going to happen. If not, then we will have to tighten up the zoning ordinance because this, in my opinion, we have heard the term "bait and switch." This is nothing more than spot zoning that we have created; and this is not what was intended, not what we wanted, and not why we use the PUD. Thank you, and I hope you make the right decision and do not approve this final plan.

REBUTTAL

JAMES A. MASTERS: Your approval of the final site plan is not based on whether there are objections to the intended use of the property, so long as the use of this property complies with the South Bend Zoning Ordinance. I think what is happening here is, if I or anyone else came before you to rezone property to build a single family home to be sold. After the zoning was approved, I learned that the market was soft; and then rather than being able to sell the house, I have to lease it. So then the neighbors object and say no, we don't want a rental property next to us. Under those circumstances, do you have the authority to tell me that I can not lease my house? So long as it is in compliance with the zoning laws? When I posed that question to Mr. Byorni this morning his answer was absolutely not. Of course you can lease your house. That is what is happening here. Remonstrators want you to deny the final site plan approval merely because some of these units may be rented rather than owner occupied. You can't do that. Your role here is to determine if the final site plan complies with the zoning requirements, nothing more. I will take issue with the NNRO and NENC presentation at a couple of points. First the presentation. They showed you floor plans for a very different project. One that is not in the city, one that is up by Little Flower Church that has a different site plan and development plan. They showed you a floor plan with four bedrooms on each floor, and then try to say that that is what this project is. That he is going to rent to four unrelated parties. These folks aren't the Building Commissioner, and yet they are going to stand up here and tell you what the zoning code and everything else is. As you have, in front of you, a letter from the Building Commissioner saying what this site plan presents are 32 single family dwelling units of each of which constitutes a dwelling unit under the South Bend zoning code. Anyone else's opinion does not matter to that regard. Mr. Nussbaum told you that these are going to be rented to two or more unrelated persons. No, it's just the opposite. If they are rented, they have to comply with the South Bend Zoning Ordinance, which prohibits any more than two unrelated person living in a dwelling per unit. I understand, and Mr. Nussbaum pointed it out, Mr. Cimala tried to play lawyer on his own and prepared some leases. In those leases, he referenced four people on the lease and four bedroom units. After he asked a lawyer to review them, he was advised that those leases are wrong. He may have leases signed by students, but Legacy Square has not finalized any lease to lease to four students and four bedrooms. Any leasing of these units must comply with the South Bend Zoning Ordinance that would prohibit more than two unrelated person in

any dwelling unit. Enforcement of the zoning laws is not within your jurisdiction. That is up to the Building Commissioner. This property was rezoned by the Common Council to allow a 32 unit multi-tenant facility. You were told. They speak through their minutes. Well, you looked at their minutes. I have presented them to you. The minutes talk about a multi-tenant facility. What the council approved was a facility with no more than 32 units. That is reflected in the preliminary site plan. That is what the final site plan shows you. There is no change in the site. there is no change in the height or density. As I told you in my earlier presentation, Mr. Byorni has told us that every requirement has been complied with except that rather than him making this final decision, he has dumped it in your laps, so that you can hear everyone come in here and complain. Then you have to make this decision. The fact of the matter is that with respect to the people that have spoke here tonight, there is a fundamental misunderstanding of what this hearing is all about. This is not to redo the rezoning. You don't get to hear the evidence all over again about a rezoning. This rezoning has been approved. The only issue before you is if this final site plan can be approved. There is no modification of it, Mr. Brewer. The question is, does it meet the requirements of the PUD Ordinance and the ordinance that approved the PUD in this specific instance as Mr. Phipps pointed out. We don't redo this. We don't argue this. We don't have another hearing about whether the rezoning should be or shouldn't be. Your focus is is this site plan consistent with what was presented originally. That's all. If you can't determine that this site plan complies with the requirements of both the PUD ordinance and the ordinance which approved this particular PUD, then you have to tell us why it doesn't. You have to tell us what additional plan documents must be supplied, as specified in Section 21-05(c)(5)(f) so that the petitioner then can present you with additional information to obtain final approval. You can't simply deny approval to the final site plan. You need to approve it or you tell us what we need to do to obtain approval. I remind you that Mr. Byorni has told us that the petitioner has complied with every requirement and that the only thing that is left is for you to approve it.

KARL KING: I have in front of me a form that is intended to document our decision. It is the Findings of Fact, and there are three elements that have to be addressed. Do we need to vote on each of the three or just one motion for the whole thing?

MITCH HEPPENHEIMER: I don't think so. John and I... well let me withhold my answer until after.

KARL KING: I need to know how to proceed with the discussion here. It appears to me that there are four decisions to be made.

MITCH HEPPENHEIMER: You can vote on each one.

KARL KING: I will read the whole thing as quickly as I can. 1. the plans submitted for secondary approval satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District; yes or no; 2. the plans submitted for secondary approval accomplish the intent set forth in Section 21-05 (a), yes or no; 3. the plans submitted for secondary approval provide for the protection or provision of the site features and amenities outlined in Section 21-05 (c) (1), yes or no; those were the findings of facts and then the final item is the decision. It is therefore the decision of the Area Plan Commission that this Final Site Plan meets or does not meet the requirements for approval. My understanding is that

we need to move on the 1st item then the 2nd, then the 3rd finding of facts, then the final decision. Is that correct?

MITCH HEPPENHEIMER: Yes. Those things are set out in the staff report. You heard what Mr. King said and hopefully you follow...

KARL KING: It is set out in the staff report, and the reason why I read them is I am now going to go through them one by one and ask Commission members to vote and comment on them.

MITCH HEPPENHEIMER: The staff and I would like to make a comment.

JOHN BYORNI: Just two comments. one was in response to your question Ann (Puzzello) about the size of the units. The preliminary plan indicated that the total square footage of the residential units would be 72,705 square feet. The final plan shows that they would be 36,672 square feet. Then the other point is, I may have misheard Mr. Masters to begin with, but, I thought he said that the Executive Director authorized the issuance of the permit for the foundations. I did not authorize the issuance. In fact, I directed Christa (Nayder) that when she participated in plan review to note that a final site plan had not yet been approved. I do believe a permit was issued.

ANN PUZZELLO: Quite a difference.

JOHN MCNAMARA: A foundation permit can be issued without a final site plan?

MITCH HEPPENHEIMER: That is not in our jurisdiction.

JOHN MCNAMARA: I assume that is the case.

MITCH HEPPENHEIMER: I would like to make a comment directed to Dan (Brewer). You heard two lawyers tell you what they believe the law is. First of all, there appears to be some difference between a preliminary plan and a final plan, which is what we are acting on today. Know that they do not have to be the same, they can be variations. That is why one is called a preliminary site plan. Staff and I have had a meeting about this. Mr. Nussbaum made mention again back in the ordinance of 21-05(c)(d), and I am going to read it as it is applicable here today. It is the first finding, which states the plans submitted for secondary approval satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District. That is our ordinance. Under that finding, this ordinance says this: This is talking about the modification of a preliminary site plan and it is talking about if there is minor modifications of a preliminary plan, which has already been approved by the Area Plan Commission or Executive Director; (it) says this: If the Executive Director determines that the proposed modifications is such a nature as to adversely impact the purpose or intent of the overall development and then or if the proposed modification, so it says that if the Executive Director determines that if the modifications is such a nature as to adversely impact the purpose or intent of the overall development, the director can request the petitioner to be required to file a new petition for a zoning change. Starting all over again. We debated that, and it was determined that it would be fair to the petitioner and the public, and the commission, that we

have this public hearing to determine this decision of the final site plan. So I wanted to tell you, that's what our ordinance specifies as far as this. Does that answer your question, Mr. Brewer?

DAN BREWER: Crystal clear.

ANN PUZZELLO: There are several things that we have not talked about today, They include parking, screening, and so on. How many parking spots are on the project?

MIKE DANCH: Seventy eight parking spaces. What is required for a dwelling unit you have to have two parking spaces per unit. That was one of the development standards that we have in the overall plan. We had sixty-four, now we have seventy-eight.

ANN PUZZELLO: When City Council and the neighborhood talked about the original project in 2007, it was very well known on how we felt about this. Obviously there are families moving into the northeast neighborhood, like every neighborhood in the City, that would prefer to live around families. People they can work with and play with. They wanted it to be single family housing. The other was that they be quality homes for these people. Those two things are not part of this project now because it is a high density where it was a medium density before. They will not be families. It just isn't the same project that the neighborhood agreed to the council agreed to and the Area Plan Commission agreed to. For that reason, if under the PUD that is not taken into consideration, I am so disappointed that I am voting against this.

GERRY PHIPPS: This is something I mentioned before, but I think it is appropriate here. The PUD gives a developer the opportunity to propose standards that are appropriate for one specific development. In that process, it gives them a greater flexibility on what he develops. So the PUD Ordinance gives you greater flexibility up until the PUD is developed. Then you are held to the specific project that was shown on your site plan and the standards that you prepared. If the market changes and other things change so you can't develop it as you originally presented it, then I think we have to go through the process again.

DAN BREWER: I don't think it is right for us to focus this on whether or not it was deceit. The market changed. The question, it seems, is I think it is reasonable for the developer to ask specifics what it is about the secondary plan submitted that deviates from the ordinance. It is so vastly different than what was originally submitted and approved by the council in 2007. Four buildings instead of six. The square footage is reduced by 50%. The character is multi-tenant instead of single family which is clearly part of the original plan.

JACK MELL: I am sitting here listening to all this and I am soo soo disappointed. I understand the man is in the business to make money. We understand that. Some of the changes that he has made are so obvious, and not that it is a PUD Ordinance. I am very disappointed.

JOHN MCNAMARA: I have been on this planning commission for a long time. I was on it when the northeast neighborhood association presented a plan for their neighborhood that would attempt to fill in the vacant lots with single family housing. It will also attempt to do away with vacant landlords and to turn those absentee houses over to single family owners who could live there and be part of the neighborhood. I thought that was a good idea for the area. I see this as

flying in the face of that. I understand the market changed. I understand that what they were attempting to do three years ago has changed a lot because of the economy. That doesn't mean we have to go against what the neighborhood wants to do and what good planning is for that neighborhood. I just don't see it. You put us in a position, where because the foundation is in, we have to conform to that. I don't believe that. If you built the foundation on a whim, then go ahead and go with the whim. I am not going to be put in that box that says I have to approve a building to go on top of that foundation just because you chose to build the foundation. If the Building Department issued the foundation permit, they were wrong.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Jack Mell, and unanimously carried, the Area Plan Commission determines that the plans submitted for secondary approval do not satisfy the permitted uses and development standards specified in the PUD District Ordinance establishing such PUD District.

Upon a motion by John McNamara, being seconded by Ann Puzzello and unanimously carried, the Area Plan Commission determines that the plans submitted for secondary approval do not accomplish the intent set forth in Section 21-05(a) of the South Bend zoning ordinance.

Upon a motion by John McNamara, being seconded by Jack Mell and unanimously carried, the Area Plan Commission determines that the plans submitted for secondary approval does not provide for protection or provision of the site features and amenities outlined in Section 21-05(c) (1) of the South Bend zoning ordinance.

Upon a motion by John McNamara, being seconded by Jack Mell and unanimously carried, the Area Plan Commission determines that the Final Site Plan does not meet the requirements for secondary approval and therefore, is denied.

ITEMS NOT REQUIRING A PUBLIC HEARING

1. MISCELLANEOUS:

- A. Appointment of Linda Mauller of the St. Joseph County Health Department to the Plat Committee of the Area Plan Commission for 2010.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by John DeLee and unanimously carried, Linda Mauller was appointed as a member of the Plat Committee.

- B. Appointment of Marc Nelson of the St. Joseph County Health Department and Charles Porter of the St. Joseph County Engineer's Office as alternate members of the Plat Committee of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Robert Hawley and unanimously carried, Marc Nelson and Charles Porter were appointed as alternate members of the Plat Committee of the Area Plan Commission.

- C. Re-appointment of Robert Hawley to the Board of Zoning Appeals.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Jack Mell and unanimously carried, Robert Hawley was re-appointed to serve on the Board of Zoning Appeals.

2. EXECUTIVE DIRECTOR'S REPORT:

JOHN BYORNI: I want to thank you for your services this past year and we look forward to working with you next year.

3. MINUTES AND EXPENDITURES:

- A. Approval of the minutes from the November 16, 2010, meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the minutes from the November 16, 2010 meeting of the Area Plan Commission were approved.

- B. Approval of the minutes from the special meeting of the Area Plan Commission on December 7, 2010.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the minutes from the special meeting of the Area Plan Commission on December 7, 2010 were approved

C. Approval of the expenditures from November 16 through December 21, 2010.

Byorni, John - \$15.00; Commissioners - \$51.80; COPS - \$49.43, \$135.18; Intra Business - \$59.34; Lewis Paper - \$12.20; Marathon Gas - \$57.03; Postage - \$57.03; South Bend Drafting – \$43.86; South Bend Tribune – \$17.20.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Jack Mell and unanimously carried, the expenditures from November 16 through December 21, 2010 were approved.

4. ADJOURNMENT: 6:50 P.M.

ATTEST:

JOHN W. BYORNI, SECRETARY

KARL KING, PRESIDENT