

DRAFT

**MONROE COUNTY PLAN COMMISSION  
Virtual Meeting via ZOOM - Minutes  
September 21, 2021 5:30 P.M.**

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES – April 20, 2021 and May 18, 2021**

**CALL TO ORDER:** Margaret Clements called the meeting to order at 5:30 PM.

**ROLL CALL:** Margaret Clements, Dee Owens, Julie Thomas, Trohn Enright-Randolph, Geoff McKim, Amy Thompson, Jerry Pittsford, Bernie Guerrettaz, Julie Thomas, Bernie Guerrettaz, Trohn Enright-Randolph

**ABSENT:** *Jim Stainbrook*

**STAFF PRESENT:** Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Rebecca Payne, Planner/GIS Specialist, Anne Crecelius, Planner/GIS Specialist, Drew Myers, Planner/GIS Specialist, Tammy Behrman, Senior Planner

**OTHERS PRESENT:** Michele Dayton, Tech Services, David Schilling, Legal, Kelsey Thetonia MS4 Coordinator, Lisa Ridge, Highway Department Director, Paul Satterly, Highway Engineer

**INTRODUCTION OF EVIDENCE:**

**Larry Wilson introduced the following items into evidence:**

The Monroe County Zoning Ordinance (as adopted and amended)

The Monroe County Comprehensive Plan (as adopted and amended)

The Monroe County Subdivision Control Ordinance (as adopted and amended)

The Monroe County Plan Commission Rules of Procedure (as adopted and amended)

The case(s) that were legally advertised and scheduled for hearing on tonight's agenda

**The motion to approve the introduction of evidence carried unanimously.**

**APPROVAL OF AGENDA**

**Motion to approve the agenda, carried unanimously.**

**APPROVAL OF MINUTES**

**Motion to approve minutes from April 20, 2021, carried unanimously.**

**Motion to approve minutes from May 18, 2021, carried unanimously.**

**ADMINISTRATIVE BUSINESS: CDO Update.**

**UNFINISHED BUSINESS:**

- 1. PUO-21-3**      **Heritage Creek Outline Plan Amendment 2  
Final Hearing.**  
Two (2) 6.60 +/- acre parcel in Section 29 of Clear Creek Township at 9200 block +/- S Harrodsburg Rd.  
**Zoned PUD.** Planner: [jnester@co.monroe.in.us](mailto:jnester@co.monroe.in.us)  
**\*\*\*CONTINUED BY PETITIONER\*\*\***
  
- 2. PUO-21-1**      **P & G Planned Unit Outline Plan to rezone property from PB to PUD  
Final Hearing.**  
One (1) 4.93 +/- parcel located in Section 29, Perry Township at 5100 W Victor Pike. Parcel number: 53-08-29-200-023.000-008.  
**Zoned PB.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)  
**\*\*\*CONTINUED BY PETITIONER\*\*\***

**NEW BUSINESS:**

- 1. SSS-21-7**      **Addison Sliding Scale Subdivision Preliminary Plat  
Partial Plat Vacation (all owners do not agree to sign)  
Preliminary Hearing.**  
Three (3) parcels on 29.99 +/- acres located in Section 18 of Salt Creek Township at 3863 S Swartz Ridge RD.  
**Zoned Forest Reserve/ECO 3.** Contact [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)
  
- 2. SMN-21-10**      **Meska/Storms Minor Subdivision Preliminary Plat  
Sidewalk Waiver Request.  
Street Tree Waiver Request.  
Waiver of Final Hearing Requested.  
Preliminary Hearing.**  
Two (2) parcels on 18.39 +/- acres located in Section 13 of Van Buren Township at 3110 S Leonard Springs RD.  
**Zoned RE1.** Contact [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)
  
- 3. REZ-21-3**      **Worms Way Lot A Rezone from AG/RR to LI  
Waiver of Final Hearing Requested.  
Preliminary Hearing.**  
One (1) 6.65 +/- acre parcel in Section 28 of Washington Township at 7850 N Wayport RD, parcel # 53-02-28-100-006.000-017.  
Owner: Ah & Sh LLC  
**Zoned AG/RR.** Planner: [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)

- 4. 2009-SMN-09**      **Deckard Farms Minor Subdivision Preliminary Plat  
Sidewalk Waiver Request.  
Utility Waiver Request.  
Waiver of Final Hearing Requested.  
Preliminary Hearing.**  
Two (2) parcels on 36.89 +/- acres located in Section 23 of Richland Township at 3807 W Walcott RD.  
**Zoned AG/RR. Contact [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)**
- 5. REZ-21-4**      **Hamilton Rezone from RE1 to AG/RR  
Waiver of Final Hearing Requested.  
Preliminary Hearing.**  
One (1) 134.5 +/- acre parcel in Section 8 of Bloomington Township at 1300 W Bell RD, parcel #53-05-08-300-007.000-004.  
Owner: Hamilton, Jeffrey A & Jean Messenger  
**Zoned RE1. Planner: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)**
- 6. 2101-ZOA-01**      **Amendment to the Monroe County Zoning Ordinance:  
Chapter 807- Signs  
Chapter 801 – Definitions  
Preliminary Hearing. Waiver of Final Hearing Requested.**  
Amendments to the definitions and sign ordinance proposed.  
**Contact: [lwilson@co.monroe.in.us](mailto:lwilson@co.monroe.in.us)**

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**ADMINISTRATIVE BUSINESS:  
CDO Update**

Clements: Since we last met the Planning staff has went out to various locations around the county to receive public feedback at an early stage on Module 2 and at this time I would like to have an update from the Planning Department about what went on at those meeting, what were your big take a ways and where do we stand with regard to the CDO update.

Nester Jelen: Sure, thanks Margaret. The next meeting update is going to be September 30, 2021 via zoom. Earlier this month as you eluded to Margaret, we had in-person shelter meetings. Those did go very well. I have an update on the number of attendees at each meeting. At the Karst Farm Park we had 36 attendees. Flatwoods Park we had 17 attendees and Danny Smith Park we had 11 attendees. So, that was 64 people total. What we are doing at these meeting and at the upcoming zoom meeting is we are reviewing that draft zoning map with people and we are having productive conversations as it relates to the current list of permitted uses and what their current zoning is. We are using it as kind of a discussion for how we are going to be looking at the draft zoning map, what we are looking at in terms of current list of uses, what people current like or don't like about the permitted uses or about their permitted zoning. So, we have had some productive conversations with people all around the county. A little bit of report back on some comments just overall, so at the end we do have a survey that is tied to that draft zoning map, which you can find on the monroecdo.com website. 32 people ended up filling out the surveys for individual properties and that survey is just a simple 5 questions. People rate how they view the draft zoning map, what comments or questions they have and then that flags us to be able to get back with people. The map is still a draft so we are just encouraging people to take a look at it now, ask us questions and of course people are very curious and wanting to know what the new list of permitted uses will be. So, Module 2 is the list of permitted uses as well as the draft zoning map. But we wanted to engage people a little bit early to hopefully incorporate some of the public feedback into a draft of Module 2. We have internally received a draft of Module 2 but it needs to go through staff review and also legal review and then we are hoping to have that reported back to the Plan Commission and then once that has been done we will then release it out to the general public and have a meeting discussion, probably at a Plan Commission Administrative Meeting and invite the public to come similar as we did for Module 1. So, that is kind of my report back.

Clements: Do any of members of the staff have anything else to report on this? I would just like to say there is an awful lot going on in the community with the annexation debate and I find it a little bit overwhelming to have the comprehensive or the development ordinance changed at this moment in time, especially with all of the known unknowns with annexation issues. I don't know if any other members of the Plan Commission feel that same way or if it is prudent to discuss this any further at this time. So, there is no discussion, we will move onto the next item on the agenda.

**QUESTIONS FOR STAFF – CDO: None**

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**UNFINISHED BUSINESS**

**1. PUO-21-3 Heritage Creek Outline Plan Amendment 2  
Final Hearing.**

Two (2) 6.60 +/- acre parcel in Section 29 of Clear Creek Township at  
9200 block +/- S Harrodsburg Rd.

**Zoned PUD.** Planner: [jnester@co.monroe.in.us](mailto:jnester@co.monroe.in.us)

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:** Petition has been continued by the petitioner.

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**UNFINISHED BUSINESS**

**2. PUO-21-1 P & G Planned Unit Outline Plan to rezone property from PB to PUD  
Final Hearing.**

One (1) 4.93 +/- parcel located in Section 29, Perry Township at 5100 W  
Victor Pike. Parcel number: 53-08-29-200-023.000-008.

**Zoned PB.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:** Petition has been continued by the petitioner.

**NEW BUSINESS**

**1. SSS-21-7                    Addison Sliding Scale Subdivision Preliminary Plat  
Partial Plat Vacation (all owners do not agree to sign)  
Preliminary Hearing.**

Three (3) parcels on 29.99 +/- acres located in Section 18 of Salt Creek Township at 3863 S Swartz Ridge RD.  
**Zoned Forest Reserve/ECO 3. Contact [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)**

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:**

Payne: Good evening everyone. This is a petition for a Sliding Scale Subdivision for one parcel to be divided into 3 new lots and it includes a Partial Plat Vacation from the Rinker Minor Subdivision that was recorded in 1997. As proposed in the Preliminary Plat, Lot 1 will contain 3.76 acres, of which 1.03 acres will be buildable and on this lot there is an existing home. Lot 2 will contain 6.12 acres with 1.46 acres of buildable area and Lot 3 will contain 12.36 acres with 3.03 acres of buildable. The property is currently zoned Forest Reserve and it does fall inside of ECO Area 3, Environmental Constraints Overlay Area 3. There are slopes present on the property as you can see here on the slope map on the left side. This petition or subdivision request went to the Plat Committee on August 19<sup>th</sup> and at that meeting they voted to send along a positive recommendation to Plan Commission. Here you can see the proposed Preliminary Plat. Again it is 3 lots. In terms of a recommendation, staff does recommend approval of the Sliding Scale Subdivision, based on findings of fact. Regarding the Partial Plat Vacation that is required as part of this subdivision staff recommends denial for this piece of it, mainly because of 2 reasons; according to state code; conditions in the platted area have changed so as to defeat the original purpose of the plat, so we do not find any findings around that and further petitioner did not end up submitting to us findings related to this requirement. So, that is the basis of our denial on the Partial Plat Vacation portion of this request. It is a straightforward subdivision. It just has this plat vacation piece where not all of the property owners were in agreement so that weighed in on our staff recommendation. So, with that I will take any questions.

**RECOMMENDED MOTION**

***Recommended Motion Conditions or Reasoning:***

Staff recommends **approval** of the Sliding Scale Subdivision based on findings that the proposed preliminary plat meets the Subdivision Control Ordinance and subject to the MS4 Coordinator and Highway Engineer reports.

Staff recommends **denial** of the partial plat vacation request from the Rinker Subdivision based on the finding under *IC-36-7-4-711: (1) conditions in the platted area have changed so as to defeat the original purpose of the plat* and the lack of findings submitted by the petitioner.

**PLAT VACATION FINDINGS**

The petitioner has proposed to vacate Lot 1 of the Rinker Minor Subdivision Plat.

The petitioner is requesting to vacate Lot 1 under Indiana Code - Section 36-7-4-711:

**Sec. 711** (a) The plan commission (or plat committee acting on its behalf), proceeding in accordance with IC 36-7-3-10 or with this section, has exclusive control over the vacation of plats or parts of plats.

(b) In a case in which not all the owners of land in a plat are in agreement regarding a proposed vacation, this section provides an alternate procedure under which one (1) or more owners of land in the plat may file with the plan commission a petition to vacate all the plat or only that part of the plat that pertains to land owned by the petitioner or petitioners. A petition under this section must:

- (1) State the reasons for and the circumstances prompting the request;
- (2) Specifically describe the property in the plat proposed to be vacated; and
- (3) Give the name and address of every other owner of land in the plat.

(c) Subject to section 714 of this chapter, a petition under this section may also include a request to vacate any recorded covenants filed as a part of the plat.

(d) Not more than thirty (30) days after receipt of a petition under this section, the plan commission staff shall announce the date for the hearing before the plan commission (or plat committee acting on the plan commission's behalf). The plan commission shall adopt rules prescribing procedures for setting hearing dates and for providing other notice as may be required in accordance with this chapter. The petitioner shall pay all expenses of providing the notice required by this subsection

(e) The plan commission shall adopt rules prescribing procedures for the conduct of the hearing, which must include a provision giving every other owner of land in the plat an opportunity to comment on the petition.

(f) After hearing the petition, the plan commission or plat committee shall approve or disapprove the request. The commission or committee may approve the vacation of all or part of a plat only upon a determination that:

- (1) Conditions in the platted area have changed so as to defeat the original purpose of the plat;

**Petitioner Findings:**

- (2) It is in the public interest to vacate all or part of the plat; and

**Petitioner Findings:**

- (3) The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.

**Petitioner Findings:**

(g) The commission or committee may impose reasonable conditions as part of any approval. The commission or committee shall furnish a copy of the commission's or committee's decision to the county recorder for recording.

(h) An applicant or other interested party may appeal the approval or disapproval of a vacation by the plat committee in the manner prescribed by section 402(d) of this chapter.

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**QUESTIONS FOR STAFF – SSS-21-7 - Addison**

Clements: Rebecca, I have a question about minimum acreage and you know on this Sliding Scale Subdivision. Does the parent lot meet all of the acreage requirements of size? Because it says only 2 and half acres is required for both Lot 1, 2 and 3 but yet Lot 3 is 12.36 acres, Lot 2 is 6.12 acres and Lot 1 is 3.76 acres. So, was that a mistake saying that 2 and half acres on all 3 lots was required for Sliding Scale Subdivision?

Payne: Yes. You are reading the report, I am assuming?

Clements: I am on page 110 of the packet.

Payne: Yes, so that was the minimum acreage required outside of a Sliding Scale Subdivision. In this instance, you can see that the proposed acreage is the 3.76, 6.12 and the 12.36, so they are meeting the minimum acreage requirement. But the buildable area is also meeting the minimum acreage requirement for the buildable component.

Clements: So, it is meeting those requirements. Ok.

Payne: Yes, it is.

Clements: Ok. Mr. McKim has a question.

McKim: I just wanted to know what the consequence of denying the Partial Plat Vacation would be for the petitioner.

Payne: That is a good question.

Nester Jelen: Geoff, if the Plat Vacation is denied the other option is that they do receive sign off from neighbors to allow the subdivision to go through.

McKim: Ok, so, alright, so, if we were to grant the Partial Plat Vacation then they wouldn't need that permission.

Nester Jelen: That is correct.

McKim: Ok.

Clements: Are there any other questions? Commissioner Thomas?

Thomas: This is a very sloped area. Each of these lots have sufficient buildable area if there is a Plat Vacation, correct?

Payne: Yes, correct.

Thomas: If there is not a vacation then they can't do any of this.

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Payne: Well, that vacation is not tied necessarily to the buildable area. So, this property was included in a plat that was recorded in '97. So, to reorganize the acreage now they have to vacate from that original plat and sort of start over sort of speak.

Thomas: Right, but they can't do any of this subdivision, sliding scale or not, they can't do anything until that plat is vacated. Correct?

Payne: I think that is correct.

Clements: I heard some noise but I don't see a hand raised. Mr. Pittsford.

Pittsford: The noise was me but I decided to raise my hand. My question is the petitioner did not submit any findings. Is there any possibility that the petitioner would be able to present findings of fact that would support change in condition that would legitimate the vacation of the plat? I know the standard for that is not exactly stringent so just kind of curious about that.

Payne: Yes, I think the answer to that is yes it is possible. But I am sure and I don't know if the petitioners representative who is the surveyor in this case, I am not sure if he is on the call, I can't see for sure, but if he is and wants to weigh in maybe he can shed some light on the findings of fact that we were hoping to get.

Pittsford: May I have a follow-up, President Clements?

Clements: Yes, please, Mr. Pittsford.

Pittsford: Ok, if it is the case that they possibly have findings are we willing to entertain those findings tonight in this meeting so that we can move forward or is this a proposal that right for tabling until they present the findings so that we can actually move on in an informed fashion? Thank you.

Clements: Mr. Wilson.

Wilson: I think I just want to clarify and Dave can jump in too if he wants to comment, in the absence of consent from all of the lot owners in the subdivision in order to vacate any of the lots there basically has to be a hearing and a finding that the purposes of the subdivision have materially changed and that justifies the new subdivision. Typically, everybody consents to the subdivision or the individual owns all of the lots. In this case there is a lot that is not owned by the subdivider and accordingly there has to be a finding. You can vacate it still but there has be some finding that meets the statutory requirement for vacation for the plat. Dave, do you want to join in on that?

Schilling: Larry, I think you explained that correctly.

Clements: Mr. Wilson do you have anything else to add or Mr. Schilling?

Wilson: I do not. If the Plan Commission feels comfortable with the evidence, we were asking for some basis, some evidence that showed that a vacation of the entire plat was justified or the lots

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from the plat were justified and that is all that we did not receive from the petitioner.

Clements: Ok, Mr. Guerrettaz and Mr. Pittsford.

Guerrettaz: Thanks Margaret. I am looking at the original Rinker Subdivision Minor Subdivision Survey Drawing book 4 page 339, and I think that the conditions of how that Minor Subdivision was created have changed since 1997 when the standards were put together at that time and follow. If you look at this survey drawing compared to the modern document that the petitioner's representative put together there is statements of dedication to the public that is actually called a Final Plat or will be called a Final Plat. I remember doing drawings in 1997 under these criteria and it is a wholly didn't process than what we experience now and I don't think that the petitioner or anyone that would have been involved in that at the time would have realized that in what is it 14 years, 24 years, wow, anyway that the conditions would be such that this would be required. I think that this level has changed immensely based on the standards and therefore the construct of the plat and intention of when it was done on 1997. So, that is all I have got.

Clements: Thank you, Mr. Guerrettaz. Mr. Pittsford.

Pittsford: Sorry, thank you President Clements. I understand what Bernie is saying very comprehensively. But what I don't see is those findings in this packet, which makes me reluctant to move forward and it sounds like from Mr. Wilson's statement and Mr. Schilling's certification of that statement that without a meeting with the adjacent property owners we can't truly enter that evidence. So, I think this is a situation where this petition is positioned right now for tabling.

Clements: Thank you, Mr. Pittsford. Commissioner Thomas.

Thomas: Sorry, I do have a follow up question based on Bernie said. It seems to me what Mr. Guerrettaz was talking about, which makes sense is that we proceed differently now than when we platted in 1997. I get that. But I am reading the piece of the statute that is cited in our packet and it is conditions in the platted area if changed and to me what Mr. Guerrettaz is talking about is not about conditions in the area changing but about but about how we do business. So, I am wondering if either Mr. Schilling or Mr. Wilson can offer some clarification on what conditions in the platted area having changed means and perhaps give us an example of some you make up, so we can understand it. Thank you.

Clements: Thank you.

Wilson: I will go ahead and attempt to reply. I think for example if you had a subdivision that was fairly large parcels and then sewer became available or water wasn't available before and it became available, if roads were limited and were widened and increased access, it is very vague and I think it is probably intentionally vague to allow the Plan Commission to grant a vacation. It is just that we have to hang our hat on something in making a finding. The other thing I will note is I would guess that going back on vacation on plats weren't always required before another subdivision came in before a lot was replatted into a new subdivision. So, that maybe another thing that we are attempting to follow the statute now in regard to requiring a vacation basically you can't over resubdivide a property without vacating the lots, the impacted lots that would go into the new

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subdivision.

Clements: Mr. Guerrettaz and then me.

Guerrettaz: Sorry Margaret. I am just going to hang tight here just a moment with this question. Jerry brought up a good question or comment. He said that this petition would fail. There would be another potential for we could continue this petition this evening if we feel there isn't information provided that the petitioner/petitioner representative findings and I support staff needing findings from the petitioner, so I follow right in suit with that. But is there a reason why, staff, is there a reason why we couldn't vote to continue this and then the petitioner could have an understanding and what we are looking for? Assuming that they didn't from staff's no doubt very direct communication with them prior to this evenings meeting.

Wilson: There is absolutely no reason why you can't continue this as far as I know.

Clements: I am just concerned myself about the ECO Constraints over this land with all of the steep slopes and I just want to put that on the record as far as abiding by the rigger of the ecological constraints in this particular area. So, with that being said, is there someone who either wants to make a motion or do we hear from the petitioner at this motion?

**PETITIONER/PETITIONER'S REPRESENTATIVE – SSS-21-7 – Addison: None**

**SUPPORTERS – SSS-21-7 – Addison: None**

**REMONSTRATORS – SSS-21-7 – Addison: None**

**ADDITIONAL QUESTIONS FOR STAFF - SSS-21-7 – Addison: None**

**FURTHER QUESTIONS FOR STAFF - SSS-21-7 - Addison**

Pittsford: If I may jump in President Clements, I just actually put a thing in the comments. My preference is and what I heard and Mr. Schilling I am willing to be corrected, what I heard was that without hearing from adjacent property owners the plat vacation findings are not really going to move forward. I also would say on a personal note or an individual preference that I would rather not entertain findings at this late date and try to move this forward and with all of that said if it is appropriate, **I would like to move this petition case number SSS-21-7, be continued to our next meeting that is not administrative.**

Guerrettaz: **Second.**

Clements: Ok, Mr. Wilson will you please call the roll?

Wilson: I will. The motion is to continue SSS-21-7, Addison Sliding Scale Subdivision and Plat Vacation to the October, Regular October Meeting on the 3<sup>rd</sup> Tuesday of the month of the Monroe County Plan Commission. A vote in favor is a vote to continue to the regular meeting in October. Dee Owens?

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Owens: Yes.

Wilson: Jerry Pittsford?

Pittsford: Yes.

Wilson: Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Trohn Enright-Randolph?

Enright-Randolph: Since I wasn't here for the full discussion I am going to recuse myself.

Wilson: Ok, I will note your abstention. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Payne: Larry, can I interrupt for one second? I can see that we have a hand raised from the petitioner. I don't know if we lost the moment for him to speak but I do see that Eric Deckard has his hand raised.

Clements: Well, I am sorry, we have such a full agenda and it has been the ruling of the Plan Commission that we cannot move forward on this at this time. So we are going to move forward to the next item on the agenda.

**The motion in case SSS-21-7, Addison Sliding Scale Subdivision Preliminary Plat, Partial Plat Vacation (all owners do not agree to sign), Preliminary Hearing, in favor of continuing case to the October regular meeting of the Plan Commission, carried unanimously (7-0) with 1 abstention (Enright-Randolph).**

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Clements: Yes, Mr. Pittsford your hand is raised, I am so sorry.

Pittsford: Yes, I just wanted to add direction to Rebecca that she get in touch with petitioner's representative and layout exactly what transpired here and identify what is necessary for the plat vacation in case that was not clear to the petitioners.

Clements: We are sorry for any inconvenience. We do express our regrets.

Nester Jelen: Margaret, if I could just jump in too on the Unfinished Business, since we have a lot of attendees, I just want to clarify for anyone that is in the attendees listening in for the PUO-21-3, Heritage Creek Outline Plan Amendment 2 or PUO-21-1, P & G Outline Plan to rezone property from PB to PUD, both of those petitions have been continued by the petitioner and that came out after the packet went out, so we do apologize for any confusion. That will be on the October regular Plan Commission meeting agenda though.

Clements: Thank you for clarifying that Jackie. I totally forgot to inform our public. Thank you very much. I see another panelist his hand is raised. So, Mr. Enright-Randolph.

Enright-Randolph: Yes and thanks Jackie so much for clarifying that. I just asked that question in the chat. I am currently attending a conference and those were big concerns, those 2 big petitions that have been continued so I am going to graciously bow-out of tonight's meeting. I don't think I said gracefully the way I meant to, gracefully bow-out of the meeting and I will let you guys proceed. I would be around for the public's edification if I wasn't already out of town for a conference and I wanted to make sure I was here for those first 2 petitions and since they were continued I am going to go ahead and depart from the meeting tonight.

(Enright-Randolph left meeting at 6:02 pm)

Clements: Thank you so much Trohn. Have a good conference. Ok, so let's move on to SMN-21-10.

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**NEW BUSINESS**

**2. SMN-21-10**

**Meska/Storms Minor Subdivision Preliminary Plat  
Sidewalk Waiver Request.  
Street Tree Waiver Request.  
Waiver of Final Hearing Requested.  
Preliminary Hearing.**

Two (2) parcels on 18.39 +/- acres located in Section 13 of Van Buren Township at 3110 S Leonard Springs RD.

**Zoned RE1. Contact [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)**

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:**

Myers: Great. Can you hear me ok?

Clements: Yes.

Myers: Ok, alright. This is SMN-21-10, Meska/Storms Minor Subdivision. The proposed subdivision will create 2 lots out of one 37.85 acre lot. Lot 1 will have 18.39 acres, while Lot 2 will have 19.46 acres. Access to proposed Lot 2 will stem from South Omaha Crossing Drive to the south via a new cul-de-sac to be constructed. Additionally, a 50' ingress/egress easement will extend from the cul-de-sac to provide access to the property adjacent to the north currently owned by the Phillips. The construction of the cul-de-sac and the driveway within will disturb more than an acre. That work will require a Rule 5 Permit. The MS4 Coordinator has stated some concerns regarding Sinkhole Conservancy Areas near this ingress/egress easement that is proposed and may request an alternative route based on the survey topographical lines, but I believe that recent conversations with the MS4 Coordinator and the petitioner's representative have clarified some of those topographical lines and that area should be ok bearing anything else from coming up in further review. Alright, so we do have 2 waiver requests with this as well. We have a partial Sidewalk Waiver request for South Leonard Springs Road as well as a Street Tree Waiver request along South Leonard Springs Road. Here we have the location map. It is located at 3110 South Leonard Springs Road here up in the top left corner of the screen and we have the slope map here as well in the bottom right corner. You will note that there are some sinkhole areas that have been identified from the contours here as well as on the preliminary plat that we will get to here in a little while. Here we have some on the ground photographs of the petition site. So, this is the driveway cut here in front of you. You have the petition. This is looking south on Leonard Springs Road and then on this side of the screen to the right we are looking north on Leonard Springs Road. Note the power lines as well as the steady grade on either side of the petition site. Some more photographs looking south and then on the left side of the screen is a photograph looking towards the existing home on proposed Lot 1 along with the existing utility sheds. This is the long drive that goes back to access those multiple structures, excuse me, and then here on the right side of the screen is another view point of South Leonard Spring Road looking north. Switching sides here, so this is where the South Omaha Drive road stub and we will see a cul-de-sac constructed here at the end that will provide access to proposed Lot 2. Coming through that brush that you saw on the screen previously opens up to this acreage here that maintains the cul-de-sac construction as well as the ingress/egress easement of 50' that will continue through actually this gap area here. This

right here is a confirmed Sinkhole Conservancy Area, but I do not believe this one is on the preliminary plat. Alright, so here is the preliminary plat. On the next screen I have it zoomed in a little bit more to see a bit more of the details. Here is South Omaha Crossing Drive road stubs and proposed construction of the cul-de-sac along with dedication of the right of way. Sidewalks are to be constructed all the way around this cul-de-sac. I do not believe that there has been any response from the petitioner/petitioners representative that states that they do not wish to build sidewalks here. Sidewalks are all throughout the subdivision to the south. So, it makes sense and is in the code to build the sidewalk all the way around the cul-de-sac. You will note the 50' ingress/egress easement coming here at the end of the cul-de-sac and this is to provide access to the lot up here owned by the Phillips. The ultimate goal for the Storms part of this petition is to build up in this area once they purchase the land from the Phillips. But right now this is just this petition, this 2 lot Minor Subdivision so we are just focusing all of our attention on particulars of this petition. Here is the dividing line between the 2 lots. Lot 1 has the existing structures on it as well as a few other Sinkhole Conservancy Areas that have been delineated. Note the right of way dedication as well and this is the length of the roadway along South Leonard Spring Road that the petitioner is requesting the waivers. Here we have it zoomed in a little bit more. I'm sorry that it became a little bit blurry but we do have some good detail here at least for seeing structures, Sinkhole Conservancy Areas, the topographical lines, as well as other small details that are on the preliminary plat. Here we have the submitted cul-de-sac design. So, this is an older version that will be updated to show the sidewalks to be constructed all the way around. If we have any questions about any of this material we can always come back to it or ask the petitioner's representative to clarify any questions as well. Ok, so let's get into the discussion of the Sidewalk Waiver and the Street Tree Waiver. The Sidewalk Waiver comes from Chapter 856-40(A) in that sidewalks are required based on a few wherever these are applicable. So, number 1 and number 2 are pulled from the Subdivision Control Ordinance apply here, so that is (1) the proposed subdivision has road frontage or the streets will connect with an existing or proposed subdivision or business development that has sidewalks. The subdivision to the south applies here, as well as (3) the proposed subdivision is within the Urban Service boundary as shown in the comprehensive plan, and that is effective here as well. So, on the western side of South Leonard Spring Road we do have some sidewalk present. 256 feet north of the petition side we do have some sidewalk starting there. This was missed in the Admin. Meeting. There is some sidewalk here. It is kind of hard to see on the GIS but there is some commercial buildings and out front of those commercial buildings adjacent to the pavement is some sidewalk. So, we do have some on the north side of the petition site on the western side of Southern Leonard Springs Road and we do have some sidewalk also to the south of the petition site west of South Leonard Springs Road and that starts about 2,253 feet. There are also nearby Bloomington Transit bus stops. We did have some communication with some City of Bloomington Official regarding this petition and the Sidewalk Waiver and there was some new information that came up. I will cover that here in a minute but just too quickly note there are 2 nearby Bloomington Transit bus stops. One of them on the west side is Leonard Springs at Plaza West, which is approximately 430 feet north of the petition site and then to the south we have the Heatherwood Mobile Park stop, which is approximately 1,760 feet to the south of the petition site. On the eastern side of South Leonard Springs Road we do have other sidewalk present as well approximately 830 feet to the north, as well as 1,080 feet to the south. I do have a map that shows all of the sidewalks that are present in the area as well that we cover here in a moment. But first, here we have the petitioner's representative submitted findings for the Sidewalk Waiver stating practical difficulties have been demonstrated. This is included in the packet so I hope that

you have reviewed their rationale and I imagine the petitioner's representative will have some things to say about their findings as well. Their main concern is that it will cause some dangerous crossing of South Leonard Springs Road if there are some short segment sidewalk are constructed in front of the petition site as well as a number of other things here that we can go over later if we have questions on or the petitioner's representative can speak on. Here we have some materials from the City of Bloomington Officials. I have an email from Beth Rosenbarger. It is a rather lengthy email so I won't read it aloud but it is basically stating that there are public bus stops nearby and that through analysis that they would be in favor of denying the Sidewalk Waiver in that the construction of the sidewalks would eventually at some point benefit public as well as potentially connect to additional sidewalks in the area. She also speaks about the distortion effect on low income and people of color in this area because of the bus stop there as well as just the lack of sidewalks generally in this area. We also have here on the right side of the screen a letter from Zac Huneck with the Bloomington Transit and he was also stating some information regarding the Sidewalk Waiver in that they are in support in denying the waiver based on their analysis citing Bloomington Transit route information as well as just the overall need for a sidewalk in the area. This was an image that was provided to me by Mr. Huneck. I added the petition site here, the approximate location in green. But the background image was prepared by him and it does have bus stops located along South Leonard Spring Road. We can come back to this for more review if you would like. So, just for additional reference, this is the Cedar Chase Subdivision. This is South Omaha Crossing Drive where the cul-de-sac will be and this is of course, South Leonard Springs Road running north/south. These are some images in text that was provided to the Planning staff by Beth Rosenbarger. So, some brief images of the street view of South Leonard Springs Road where the petition site is stating their support for denial of the Sidewalk Waiver. Here I have an image I prepared for this evening that indicates where sidewalks are located in the area. This site right here in light blue is the petition site and then everything in yellow that you see is where I was able to locate a sidewalk and trace it. So, you can see that there is substantial sidewalks within these subdivisions but there does seem to be a lack of sidewalk along South Leonard Springs Road. Here is the previously missed segment of sidewalk that was not talked about at the Admin. Meeting and this is a commercial structure here. I believe one of the bus stops is located here as well. It is hard to see the sidewalk on the GIS. It kind of blends into the pavement there. So, there is some here and there of course there is some down there on the east side of South Leonard Springs Road and then all the way down here on the west side as well, and then of course some up here to the north. I also included a slope map of this segment of the property in case you wanted to look at topography but we can come back to this. I just wanted to include it for reference purposes and if anyone had any questions about it. Here we have some images from Planning staff regarding the Monroe County Vision Map for transportation plans. You will note that the petition site is located by the green arrow and that the roadways along this area are not proposed for any future development or expansion. So, that was one of the reasons Planning staff originally has recommended an approval of the Sidewalk Waiver. We used this information to support these types of waivers on occasion or where they are appropriate. Alright, that brings me to the staff recommendation here, so overall Planning staff recommends approval of the 2-lot Minor Subdivision, based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports and the following conditions;

- 1)The petitioner address the concerns stated by the MS4 Coordinator by submitting a certified site plan for the construction of the driveway to ensure no potential Sinkhole Conservancy Areas are encroached upon.

- 2) The petitioner submit appropriate Rule 5 documentation if and only if construction of cul-de-sac and private access drive disturbs more than 1 acre.

Additionally, Planning staff recommends denial of the partial Sidewalk Waiver request along South Leonard Springs Road. This is a change of recommendation and this is based on findings of fact and analysis provided by the City of Bloomington Officials. Planning staff also recommends denial of the Street Tree Waiver request based on findings of fact. Finally I will note at the August 19, 2021 Plat Committee Meeting, Plat Committee members moved to forward this this petition to the Plan Commission with a positive recommendation and approval of both the partial Sidewalk Waiver and Street Waiver requests by a vote of 3-0. I will now take any questions.

### **RECOMMENDED MOTION**

#### ***Recommended Motion Conditions or Reasoning:***

**Approve** the subdivision based on the finding that the proposed preliminary plat meets the Subdivision Control Ordinance, subject to the following conditions:

1. The petitioner address the concerns stated by the MS4 Coordinator by submitting a certified site plan for the construction of the driveway to ensure no potential SCAs are encroached upon.
2. The petitioner submit appropriate Rule 5 permit documentation if and only if construction of cul-de-sac and private access drive disturbs more than 1 acre.

Planning staff recommends **DENIAL** of the partial the sidewalk waiver request along S. Leonard Springs RD based on the amended findings of fact and analysis by the City of Bloomington.

Planning staff recommends **DENIAL** of the street tree waiver request based on the findings of fact.

### **FINDINGS OF FACT - Subdivisions**

#### **850-3 PURPOSE OF REGULATIONS**

- (A) To protect and provide for the public health, safety, and general welfare of the County.

#### **Findings**

- The petition site is one 37.85 +/- acre parcel;
- The petition site is not in a platted subdivision;
- The site is zoned Estate Residential 1 (RE1);
- The preliminary plat amendment request is to subdivide the property into two new lots with the following details:
  - LOT 1: 18.39 acres (17.43 acres after R/W dedication); LOT 2: 19.46 acres (19.27 acres after R/W dedication);
- The preliminary plat amendment requests to waive the sidewalk requirements along S Leonard Springs RD and the street tree requirements;
- This portion of S Leonard Springs Road is under the City of Bloomington's jurisdiction;
- The construction of a cul-de-sac on S Omaha Crossing Drive is required to establish access to proposed LOT 2;

- (B) To guide the future development and renewal of the County in accordance with the Comprehensive Plan and related policies, objectives and implementation programs.

**Findings**

- The Comprehensive Plan designates the eastern half of the petition site as Mixed Residential in the Monroe County Urbanizing Area Plan;
- The Comprehensive Plan designates the western half of the petition site as Conservation Residential in the Monroe County Urbanizing Area Plan;
- See findings under Section A;

- (C) To provide for the safety, comfort, and soundness of the built environment and related open spaces.

**Findings**

- The Highway Department has submitted comments in regards to the completion of public improvements including the buildout of a cul-de-sac on S Omaha Crossing DR;
- The Highway Department requests that the sidewalks along the cul-de-sac are ADA compliant;
- The MS4 Coordinator requests a reevaluation of the surveyed topography along the 50' ingress/egress easement through proposed LOT 2, to ensure no sinkholes are disturbed;
- See findings under Section A;

- (D) To protect the compatibility, character, economic stability and orderliness of all development through reasonable design standards.

**Findings**

- The site is zoned Estate Residential 1 (RE1);
- Neighboring properties are zoned RE1 to the north, RM15 to the east, PUD – Cedar Chase to the south, and AG/RR to the west;
- See findings under Sections A & C;

- (E) To guide public and private policy and action to ensure that adequate public and private facilities will be provided, in an efficient manner, in conjunction with new development, to promote an aesthetically pleasing and beneficial interrelationship between land uses, and to promote the conservation of natural resources (e.g., natural beauty, woodlands, open spaces, energy and areas subject to environmental constraints, both during and after development).

**Findings**

- Sinkhole Conservancy Areas (SCAs) are delineated on the preliminary plat;
- See findings under Sections A & C;

- (F) To provide proper land boundary records, i.e.:

- (1) to provide for the survey, documentation, and permanent monumentation of land boundaries and property;

**Findings:**

- The petitioner has submitted a preliminary plat drawn by a registered surveyor.

- (2) to provide for the identification of property; and,

**Findings:**

- The petitioner submitted a survey with correct references, to township, section, and range to locate parcel. Further, the petitioner has provided staff with a copy the recorded deed of the petition site. County Surveyor has also reviewed the plat for survey accuracy;

- (3) to provide public access to land boundary records.

**Findings**

- The land boundary records are found at the Monroe County Recorder's Office and, if approved, a final plat will be required to be recorded as the result of the proposed preliminary plat amendment process;

**FINDINGS OF FACT – WAIVER OF SIDEWALK REQUIREMENT**

The petitioner has requested a waiver from the Sidewalks requirement, outlined in Ch. 856-40 which reads:

- A. Sidewalks shall be included within the dedicated, unpaved portions of the rights-of-way on both sides of all streets when any of the following are applicable:
  - (1) **The proposed subdivision has road frontage or the streets will connect with an existing or proposed subdivision or business development that has sidewalks, or;**
  - (2) A proposed major subdivision will be located within an area that is subject to the Business and Industrial Overlay as defined in Chapter 802 of the Zoning Ordinance, or;
  - (3) **The proposed subdivision is within the Urban Service boundary as shown in the comprehensive plan, or;**
  - (4) The proposed subdivision is within a designated growth area in one of the Rural Communities as identified by the Comprehensive Plan, or;
  - (5) The proposed subdivision has frontage on a street that provides direct access to destinations such as schools, recreational facilities, etc. OR a proposed subdivision is within 1 mile radius of destinations such as schools, recreational facilities, etc., or;
  - (6) A proposed subdivision will result in the creation of at least five lots where any of the lots in the proposed subdivision are less than 2.5 acres in size.
- B. Additionally, the Plan Commission may approve an alternate circulation plan, outside of the right-of-way, if sidewalk and/or access easement (for sidewalks, bikepaths, public access, private access, etc.) locations are clearly identified on the plat. This alternative circulation network may be constructed with an alternative material, approved by the County Highway Engineer that does not comply with Sections C - G of this section.

- C. Concrete curbs, with ramped access, are required for all streets where sidewalks are required.
- D. A grassed or landscaped median strip at least two (2) feet wide shall separate all sidewalks from adjacent curbs. The median strip shall be improved in accordance with these regulations. This requirement may be waived if the sidewalk widths specified below are increased by two (2) feet and a concrete barrier curb is used.
- E. In order to facilitate pedestrian access from the street to schools, parks, playgrounds, or other nearby streets, the Commission may require perpetual unobstructed easements at least twenty (20) feet in width. Such easements shall be indicated on both the preliminary and final plats.
- F. For residential subdivisions, sidewalks shall be constructed to the following widths:
  - (1) four (4) feet for local streets;
  - (2) five (5) feet for collector streets; and,
  - (3) five (5) feet for arterial streets.For non-residential subdivisions, sidewalks shall be constructed to a width of five (5) feet.
- G. All sidewalks shall be reinforced with steel and shall be designed and completed in accordance with Americans with Disabilities Act standards and in accordance with the Indiana Department of Transportation Road Design Manual.

Section 850-12 of the Monroe County Subdivision Control Ordinance states: “The Commission may authorize and approve modifications from the requirements and standards of these regulations (including the waiver of standards or regulations) upon finding that:

**(Also see EXHIBIT 4 Petitioner Findings of Fact)**

**1. Practical difficulties have been demonstrated:**

**Findings:**

- The petitioner is requesting the sidewalk provisions of Chapter 856-40 to be waived along the frontage of S Leonard Springs RD;
- The petitioner is required to install sidewalks along the frontage of the two proposed lots as the property:
  - Has road frontage or the streets will connect with an existing or proposed subdivision or business development that has sidewalks;
  - Is within the Urban Service boundary as shown in the comprehensive plan;
- There are sidewalks all throughout the Cedar Chase PUD subdivision adjacent to the south;
- There are no sidewalks along the west side of S Leonard Springs RD between W State Road 45 and W Heatherwood LN;
- There are sidewalks along the east side of S Leonard Springs RD, but do not begin for approximately 827’ north and approximately 1,080’ south of the petition site;

**2. The requested modifications would not, in any way, contravene the provisions of the Zoning Ordinance, the Comprehensive Plan or the Official Map of the County;**

**Findings:**

- The petitioner is meeting the requirements of the Zoning Ordinance, Comprehensive

Plan, and Subdivision Control Ordinance other than the two requested subdivision waivers for sidewalks and street trees;

- 3. Granting the modifications waiver would not be detrimental to the public safety, health, or welfare and would not adversely affect the delivery of governmental services (e.g. water, sewer, fire protection, etc.):**

**Findings:**

- Utilities are already installed for proposed Lot 1
- See Findings 1 & 2;

- 4. Granting the modifications would neither substantially alter the essential character of the neighborhood nor result in substantial injury to other nearby properties;**

**Findings:**

- See Findings 1, 2, & 3;

- 5. The conditions of the parcel that give rise to the practical difficulties are unique to the parcel and are not applicable generally to other nearby properties;**

**Findings:**

- There are practical difficulties in installing sidewalks along the frontage of S Leonard Springs RD;
- The area where sidewalks would be installed along the frontage of S Leonard Springs RD is not part of the Alternative Transportation Plan (Exhibit 7);
- Sidewalks do not exist on the west side of S Leonard Springs RD between W State Road 45 and W Heatherwood LN;
- Sidewalks exist on the east side of S Leonard Springs RD, but do not begin for approximately 827' north and approximately 1,080' south of the petition site;

- 6. Granting the requested modifications would not contravene the policies and purposes of these regulations;**

**Findings:**

- The purpose of the sidewalk requirement is to allow for pedestrian connectivity and safety that adds value to the County;
- The petitioner still intends to construct sidewalks along the cul-de-sac to establish pedestrian connectivity with the Cedar Chase PUD subdivision;

- 7. The requested modifications are necessary to ensure that substantial justice is done and represent the minimum modifications necessary to ensure that substantial justice is done;**

**Findings:**

- The sidewalk waiver is the one of two modifications requested for this subdivision;

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**8. The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant; and,**

**Findings:**

- Practical difficulties have been identified;

**9. The practical difficulties cannot be overcome through reasonable design alternatives;**

**Findings:**

- See findings under Section 1;

In approving modifications, the Commission may impose such conditions as will in its judgment substantially secure the objectives of these regulations.

**FINDINGS OF FACT – WAIVER OF STREET TREE REQUIREMENT**

The petitioner has requested a waiver from the Street Tree requirement, outlined in in 856-43 which reads:

(B) As a requirement of final approval, the applicant shall plant and/or preserve trees on the property or the subdivision in accordance with the following:

(1) Street trees shall be planted or preserved within five (5) feet of the right-of-way of the street or streets within and abutting the subdivision, or at the discretion of the Plan Commission and the County Engineer, within the right-of-way of such streets. One tree shall be planted or preserved for every forty (40) feet of frontage along each street. Such trees shall be planted or preserved when any of the following are applicable:

a. the proposed subdivision will connect with an existing or proposed subdivision or business development that has street trees, or has adjoining road frontage to a street that has street trees, or;

b. a proposed major subdivision will be located within an area that is subject to the Business and Industrial Overlay as defined in Chapter 802 of the Zoning Ordinance, or;

**c. the proposed subdivision is within the Urban Service boundary as shown in the comprehensive plan, or;**

d. the proposed subdivision is within a designated growth area in one of the Rural Communities as identified by the Comprehensive Plan, or

**e. a proposed subdivision will result in the creation of at least five lots where any of the lots in the proposed subdivision are less than 2.5 acres in size**

Section 850-12 of the Monroe County Subdivision Control Ordinance states: “The Commission may authorize and approve modifications from the requirements and standards of these regulations (including the waiver of standards or regulations) upon finding that:

**1. Practical difficulties have been demonstrated:**

**Findings:**

- The petitioner is requesting the street tree provisions of Chapter 856-43 to be waived that require the installation of street trees every 40 feet within 5 feet of right-of-way;

- For 560' of road frontage along S Leonard Springs RD, the petitioner is required to plant fourteen (14) street trees;
- For 314' of road frontage along the cul-de-sac of S Omaha Crossing DR, the petitioner is required to plant eight (8) street trees;
- Street trees are present intermittently along both the east and west sides of S Leonard Springs RD between W State Road 45 and W Fullerton Pike;
- The Cedar Chase PUD Subdivision adjacent to the south exhibits intermittent street trees throughout the subdivision;

**2. The requested modifications would not, in any way, contravene the provisions of the Zoning Ordinance, the Comprehensive Plan or the Official Map of the County;**

**Findings:**

- The petitioner is meeting the requirements of the Zoning Ordinance, Comprehensive Plan, and Subdivision Control Ordinance other than the two requested subdivision waivers for sidewalks and street trees;

**3. Granting the modifications waiver would not be detrimental to the public safety, health, or welfare and would not adversely affect the delivery of governmental services (e.g. water, sewer, fire protection, etc.):**

**Findings:**

- Utilities are already installed for proposed Lot 1;
- There are other current mature trees and landscaping on the proposed lots that match the other lots in Hays 1<sup>st</sup> Addition

**4. Granting the modifications would neither substantially alter the essential character of the neighborhood nor result in substantial injury to other nearby properties;**

**Findings:**

- Street trees are present intermittently along both the east and west sides of S Leonard Springs RD between W State Road 45 and W Fullerton Pike;
- The Cedar Chase PUD Subdivision adjacent to the south exhibits intermittent street trees throughout the subdivision;

**5. The conditions of the parcel that give rise to the practical difficulties are unique to the parcel and are not applicable generally to other nearby properties;**

**Findings:**

- There are no practical difficulties for street trees along S Leonard Springs RD or along the cul-de-sac stemming from S Omaha Crossing DR;

**6. Granting the requested modifications would not contravene the policies and purposes of these regulations;**

**Findings:**

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- The purpose of the street tree requirement is to allow for preservation or planting of trees that add value to the County, provide environmental services, and are aesthetically pleasing;
- Requesting to waive the street tree requirement because planting street trees would change the look of the property or because it is expensive is not a practical difficulty;

**7. The requested modifications are necessary to ensure that substantial justice is done and represent the minimum modifications necessary to ensure that substantial justice is done;**

**Findings:**

- The street tree waiver is one of two modifications requested for this subdivision;

**8. The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant; and,**

**Findings:**

- Practical difficulties have not been demonstrated;

**9. The practical difficulties cannot be overcome through reasonable design alternatives;**

**Findings:**

- See findings under Section 1;

In approving modifications, the Commission may impose such conditions as will in its judgment substantially secure the objectives of these regulations.

**QUESTIONS FOR STAFF – SMN-21-10 – Meska/Storms**

Clements: Mr. Pittsford and then Mr. Guerrettaz and then Mr. Wilson.

Pittsford: Ok. My first question is, is this in an area intended for annexation as currently planned by the City of Bloomington?

Myers: That is a good question. Let me pull up the area map here.

Pittsford: I will just be transparent here. My question is, is the City of Bloomington asking us to put in sidewalks into an area that they intend to annex into the City of Bloomington?

Myers: Right. I do not know if this area is. I can check.

Clements: I believe it is.

Myers: Ok.

Thomas: I do too.

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Clements: It is Area 1C I believe.

Pittsford: I would shocked if it wasn't.

Thomas: This is correct. It is Area 1C.

Pittsford: Ok, so my next question is and I hope this isn't taken the wrong way by anyone but when they put the statement in there "people of color would be disproportionately affected by the Sidewalk Waiver" my question is do they or do we know exactly how my people of color live in the area that would benefit from these sidewalks? And President Clements if that question is inappropriate, feel free to let me know. I just think that is a statement thrown out that in order to bolster their argument without fact.

Clements: I appreciate your question and I think that it is relevant and I also am concerned about the residents who are living there who have affordable housing, and whose tax impact will price them out the homes they can currently afford, so too hope that I am not inappropriate by saying that. But Mr. Guerrettaz.

Pittsford: Well, if I may follow-up just real quickly because you made a good point President Clements and I just want to say that whether a person is of color or not if the sidewalk is beneficial for accessing public transit, it is beneficial for accessing public transit and I think they gilded their argument with a question of color inappropriately in this situation.

Clements: I would agree and I think that those type of gilding can be quite diverse especially when we all care about issues of diversity and they weigh in our decisions of course. But I don't think that is so relevant for sidewalk issues. Mr. Guerrettaz and then Mr. Wilson.

Guerrettaz: I have got a question on, we have got a fairly large piece of property here so it maybe me start wondering with frontage on both lots, both parcels, this Phillips, I am looking at the petitioner's drawing of the preliminary plat and so Phillips lives up in the north west, or he owns the north west quadrant of the property. Is that correct staff?

Myers: Yes. The ownership is there. I don't know if there are any structures on that parcel. I don't believe there any structures on the parcel directly to the north.

Clements: Bernie? Are you still there Bernie?

Guerrettaz: Yes, can you hear me?

Clements: Now we can.

Guerrettaz: My internet connection is unstable. That is not the only thing. Anyway, so Philips is intending on purchasing Lot 2. Is that what I understood?

Myers: No. The background here is the Storms party involved in the subdivision is related to the Phillips family and are looking to ultimately build back here after acquiring the land from a family

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member.

Guerrettaz: Ok, so at what at Lot 2, I am not sure I understand the names well enough but Lot 2 of the petition and Phillips were those going to be combined under the same ownership?

Myers: I can't speak on the design of a future petition so I am not sure how they would come about designing it. There was an original petition, this petition before you tonight was originally a Type "E" and they changed some thing around through time to be fully transparent and then there was some conversation about reconfiguring the lots that would be over here with the Phillips and the Storms. However, I am cannot speak to what kind of design they are thinking of now or how they would design it in the future.

Guerrettaz: Ok, because I picked up at the prior meeting and at this one I thought that we were at some later date the Phillips and Lot 2 were going to be of common ownership and the question about the Administrative Type "E" Subdivision with road frontage off public right of way for each one of these lots that is why I was questioning that and just understanding what the purpose of this petition itself being a minor subdivision was. Ok, that is all I have got for now. Thanks, Drew.

Clements: Ok. Mr. Wilson and then Mr. McKim.

Wilson: I just want to comment on the condition in regard to Rule 5. I don't believe that we can exempt anyone from Rule 5 in the plat approval process. It is a state regulation that is implemented at county level. In addition even if we think the one acre requirement for the cul-de-sac and drive would not be exceeded if the sidewalk waiver is not approved then they very well be over the acreage limit. I think it also includes site preparation for the house. I think we should just basically show condition upon compliance with stormwater regulations and Rule 5 and if they are exempt then they are exempt and if they are not they are not. But for us to say only if I think is improper.

Clements: Ok. I would just like to make a note that we received a note in the chat that the area that we are discussing is not in the annexation area. It is kind of carved out of the annexation area. So, just so that we all know that is not in the annexation area. Thank you Kelsey for providing that. Mr. McKim.

McKim: Actually I was going to comment on the same issue, that yes, this is not, this property itself is not part of the annexation area, In fact I don't know that is necessarily carved out of it either. It is just the subdivision immediately to the south of this property is annexation area 1C and then the subdivision immediately to the south of that is already part of the City corporate limits. So, it is kind of a confusing area where Leonard Springs itself has been annexed in the past and little bits and pieces on both sides of Leonard Springs have been annexed in the past and are already part of the corporate limits.

Clements: Thank you. Commissioner Thomas.

Thomas: I think this is part of, not this particular property but this area is part of the annexation area because it relates to sidewalks and bus routes and access and to me that still is relevant. Even if this particular property isn't this area is part of an intended annexation area or close to it.

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Clements: Thank you for that Commissioner Thomas. Ok, are there any other questions or comments from the Plan Commission? If there are none we can go to the petitioner and the petitioner's representative to hear from them. You would have 15 minutes combined. Do you see the petitioner Drew?

Nester Jelen: I see Eric Deckard has his hand raised as the petitioner's representative. Tech Services, could you share a timer for the 15 minutes for us? Thank you.

**PETITIONER/PETITIONER'S REPRESENTATIVE – SMN-21-10 – Meska/Storms**

Deckard: Hi. Can everybody hear me?

Nester Jelen: Yes.

Clements: Yes.

Deckard: Hi. This is Eric Deckard with Deckard Land Surveying. I am representing the petitioner here this evening. I believe this petition warrants a little bit of back history. Originally this petition was submitted as a Type "E" Administrative Subdivision and if we can go to the picture where we have a nice overhead view showing the Meska's property along with the Phillips property that would be very helpful. Originally, Katie Storms, which is the Phillips daughter was wanting to acquire about a 10 acre tract in the south east corner of the Phillips property. That was also submitted as a petition as a Minor Subdivision. Now, the thought process behind the Administrative Type "E" Subdivision was to divide this Meska property half similar to this as to what this Minor Subdivision is, absorb it into the Phillips property and then create a 30 parcel that Katie Storms would acquire, which would be 10 acres from the Phillips and the 20 acres from the Meska. The reason this petition is here before you today is because the Phillips did not want to give a 90' thoroughfare through the middle of their property that was being requested by County Planning and by the Highway Department. Later on after this petition was redrafted and resubmitted as a Minor Subdivision, basically being forced to do this as a Minor Subdivision so as to not give a 90' thoroughfare through the middle of the Phillips property then we submitted this as a Minor Subdivision now triggering the Sidewalk Waivers, triggering the Street Tree Waivers and I feel that harm has been done to my client by falsely and incorrectly telling us that there needed to be a 90' thoroughfare through the Phillips property. That is why we are here before you today asking for this Sidewalk Waiver and I felt like this backstory should have been told to you out of the gate instead of trying to drag this out. Does anybody have any questions that they would like to ask?

Clements: Do any members, thank you Mr. Deckard. Do any members of the Plan Commission have any questions for Mr. Deckard? I don't see any hands raised. Let's see we have a hand raised by Mr. Wilson, then Mr. Guerrettaz, then Mr. Pittsford, Mr. McKim and then I see a hand raised by Tech Services. I wonder if there is an issue I need to be aware of.

Tech Services: No, that is just so the timer is on the forefront.

Clements: Ok, thank you. Mr. Wilson.

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Wilson: The reason it is a Minor is because there is public improvement required to extend the cul-de-sac to provide access and if there is a public improvement involved and dedication of public infrastructure it is a Minor, you can't do it as a Type "E". I don't know the history on the right of way, frankly.

Deckard: Larry, that is, well, a Minor Subdivision would have been required for, or the right of for the cul-de-sac off of Omaha Lane would have been triggered through the Minor Subdivision with the Phillips property. It would not have triggered the Leonard Springs Sidewalk Waiver request if the Meska property was handled as an Administrative Subdivision like it could have been.

Wilson: But the back portion did not have the access so there had to be some type of access created. There was no pre-existing access to it.

Deckard: We would have created, the Lot 2 would have been absorbed into the Phillips property. That would have gave them access to Omaha and State Road 45.

Wilson: But they don't have access to Omaha until the road is actually extended onto their property. It does not abut Omaha until the road is extended.

Deckard: Through the Type "E" Administrative Subdivision it would have be absorbed into the Phillips property giving them direct access to Omaha Lane.

Wilson: They don't have access to Omaha until the road is extended onto the property. It dead ends at the property line of the subdivision.

Clements: Ok. I am going to move on to Mr. Guerrettaz, if that is ok Mr. Deckard and Mr. Wilson. Mr. Guerrettaz, Mr. Pittsford and then Mr. McKim.

Guerrettaz: Ok, and so, either staff, I will just as the petitioner's rep because he has done a survey on the property. Does the Phillips property have frontage on State Road 45?

Deckard: That is correct and it also has access to West Barge Road.

Guerrettaz: Ok, and Omaha Drive it truncates at the south line of the petition property.

Deckard: It dead ends onto the Meska's property. There was going to be a Type "E" Administrative Subdivision preformed on both Meska and Phillips' that would have made 2 parcels, the Phillips' and Meska's. Now that would have given Phillips' direct access to State Road 45, Barge Road and Omaha Lane. The Administrative Subdivision does not trigger the Sidewalk Waiver.

Guerrettaz: Ok.

Deckard: But the elephant in the room was the reason that we could not do that was because the Phillips backed out of this because there was going to be a 90' thoroughfare requested by the Highway Department and also by Drew, at the Planning. He had said that this needed to be taken care of. The Phillips by no means wanted to have a 90' thoroughfare going through the middle of

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their farm, which was later determined was not something that could be done by the county.

Clements: I do find this backstory and this history to be interesting. I really appreciate, Mr. Deckard your having shared that with us. Mr. Guerrettaz, do you have any other questions?

Guerrettaz: Yes, the reason why I brought that up early is because I remember on the prior meeting and on this one again, there was conversation on the topic of the Phillips and the portion of Lot 2/Storms were related and they were going to combine those parcels, which to me, said a Type "E". I am going to move on from that. I do consider that as my judgement for the waivers but even without that, I look at my point on these waivers is they seem reasonable. I bring this property up all the time because I think it is very instructive and illustrative. It is a sidewalk that is just north of 37 North Hartstrait Road about 15 or 20 years ago and it was required by the Planning Commission and there is no connectivity and it is a sidewalk that wouldn't meet any standards and I think in areas like this when you go back and look at the staff's map of the surrounding area which is very helpful, you just look at the raw population density in any sidewalk plan along Leonard Springs Road and street trees frankly should be in a comprehensive plan that is more than just taking a 600' stretch of property, piecing the sidewalks like it has been done and hoping at some point that they will connect. That is all that I got right now. Thank you.

Clements: Thank you Mr. Guerrettaz. Mr. Pittsford and then Mr. McKim and Commissioner Thomas.

Pittsford: Thank you President Clements. My 2 questions are I am not sure I am following. Where was the 90' thoroughfare to be designated on this property? If you could illustrate that would be nice.

Deckard: Are you asking me?

Pittsford: Whoever can answer the question?

Clements: Is Drew able to?

Nester Jelen: We can draw it on the map.

Myers: Jackie can draw it on the map.

Nester Jelen: Yes. Just to provide a short context for this, in the Highway Department's Thoroughfare Plan that was adopted in 2018 there is a plan to connect Tapp and Airport at some point and so Paul Satterly, the Highway Engineer did request a Right of Way Width Dedication here in case the county would need it. Before we went further with that we did check with the Legal Department and we were not able to dedicate that right of way through a Type "E" because it was a planned thoroughfare not an existing thoroughfare needed for the purposes of the subdivision. Dave is also aware of the situation and can answer any questions on it. But it was going to right along here.

Pittsford: Ok, so why didn't that render that requirement moot and allow them to continue as

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originally planned?

Nester Jelen: They are able to continue as planned but the timing of it was such that I think Eric's point was that they reverted to doing the Minor Subdivision in the time period where they heard back from Legal about this thoroughfare.

Pittsford: Well, it sounds to me if they were misled or misled, sorry.

Clements: Ok.

Myers: I will state if I may, that we were communicating with the petitioner and the petitioner's representative that we would speak to legal. And then some time had passed without any communication that legal had performed their review, and before we could communicate the new determination, the petitioner and petitioner's representative had requested to change from the Type "E" to the Minor.

Pittsford: Well, then what is the question of a reasonable timeline.

Clements: Ok. Is there an answer to that question about the reasonable timeline or shall we just move onto the next question? Mr. Pittsford are you satisfied?

Pittsford: I am satisfied to have the question out that. If it can be answered, which I don't even know if it can be in terms of legal or practicality. But it sounds like to me that plans were made and changed based on information maybe hastily on the petitioners part because they wanted to move forward, which is understandable but if they made their haste in light of false information I feel like we owe some level of understanding whatever that looks like.

Clements: Ok, thank you, Mr. Pittsford. Mr. McKim.

McKim: Yes thank you. My inclination and I said this last time is to deny a Sidewalk Waiver, particularly along this area. I spent a year of my life advocating for this sidewalk on the east side of Leonard Springs north of this property and I was glad that the county was finally able to step up to the plate and get that built. There clearly is need for sidewalk in this area but you know, Mr. Deckard you make a very compelling case. Can you tell me why, what the hardship is in this? I understand overall why you feel like you were misled by the Planning Department and are having to go through a lot of extra procedure and incur a lot of extra costs because of the erroneous information or information that wound up later not being confirmed by legal. But can you tell me why it is such a hardship to build that stretch of sidewalk along Leonard Springs?

Deckard: Well, I would like to say first of all we first was asking for a pre-design on this that would have been back in 2020. We finally began work on this in January of 2021. This petition was redrafted and resubmitted in June and it just took us recently to get a determination about the thoroughfare going through the property. Now, it is my understanding that my client had to pay additional monies to keep his deal on the line here and her deal on the line in order to be able to subdivide the Meska property. So, it has cost them additional money. It has cost the additional money for me to come back and redraft this property and do it as a Minor Subdivision versus an

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Administrative Subdivision. So, I think there is substantial harm done there. You are also talking about several thousand dollars about constructing sidewalk through here that would not have been a requirement had this been handled administratively. If my client is on here and can hear what is going on he can explain exactly what the number figure that he had to pay to keep this deal going.

Clements: Is Mr. Meska or Mr. Storms available and would either of you like to speak? Do you see a hand raised? If not we can just allow a minute here to see if you would like speak or add to the discussion. If not, we return back to our Plan Commission members for further discussion and a motion. Oh, actually I should ask are there members of the public who would like to speak on this. Jackie do you see any hands raised?

Nester Jelen: I see Geoff McKim with his hand raised but no one with attendees with their hand raised.

Clements: Ok. Mr. McKim again. Thank you.

**SUPPORTERS – SMN-21-10 – Meska/Storms: None**

**REMONSTRATORS – SMN-21-10 – Meska/Storms: None**

**ADDITIONAL QUESTIONS FOR STAFF – SMN-21-10 – Meska/Storms**

McKim: Thank you and I appreciate everyone's indulgence. This one really is hard for me. Really I want to see sidewalks on both sides of Leonard Springs throughout this area and my inclination is to want to deny that waiver but like I said, Mr. Deckard you have made a pretty compelling case and also I think that just the map that the Planning Department has shown us about where the sidewalks are in the area, really shows a very broken up, piece mail approach to sidewalks and I think this now becoming a how identity area that it really needs some more comprehensive planning. Now I know hard because of the way it is chopped up between County and City jurisdiction. In fact, that is one of the challenges we had in getting that sidewalk to the north built east side. But I guess I am inclined to support moving forward with the petition as is even though I really would like to see a comprehensive sidewalk on both sides of the road.

Clements: Mr. Pittsford.

Pittsford: Thank you President Clements for recognizing me. I am of a mind similar to Geoff's. I have advocated for sidewalks in appropriate places since I first came on the Plan Commission. But when I look at this and I think about the timeline I can't help but feel that the petitioner was unintentionally misled by the delay in response to their original plan, which would not have triggered this. But I am also of the mind to believe that if we continue forward with the waiver request if any sidewalks are required and this portion is to be annexed into the City of Bloomington it becomes incumbent upon them to make those sidewalks happen and they seem to be very concerned about it so let them bear the cost.

Clements: Thank you Mr. Pittsford. Commissioner Thomas.

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Thomas: I am a big supporter of putting these sidewalks in and feel badly for the events that occurred but I just need to look at this as a petition that is in front of us right now and if this particular lot is outside of Area 1C then it will not get sidewalks, not that the City is full of sidewalks either. There are a number of spots in the current City that don't have sidewalk so just to assume that you annex sidewalks come automatically. They don't. They sometimes come at the expense of the homeowners as well. So, I feel like just need to look at this particular petition as it as and if we don't put sidewalks in then someone else is going to have to and we can't wait for that to happen to require the sidewalks. Thank you.

Clements: Thank you. Mr. Guerrettaz.

Guerrettaz: My only point with the sidewalks is if you look at the image that is up there now and you look at the existing road frontage density there is never going to be a contiguous connection of sidewalks on the west side of Leonard Springs Road until there is a comprehensive plan of sidewalks that Geoff mentioned to make it a project similar to what the county did up on the east side between Tapp Road and Walmart which is what I think Geoff is talking about. I think what we are going to be doing is we are going to be requiring the petitioner to construct sidewalks and invest that money for it to simply to be ripped and torn out whenever that comprehensive plan is done and while we can collectively say we want sidewalks we have got to look at this 2 lot subdivision and look at the burden that this puts on the petitioner and understand what that is especially when that will be torn up, absolutely will be torn up if there is ever a comprehensive plan. It is piece mail, the existing sidewalks piece mail and part of it is because of the way we run what we do at these sidewalk requirements under the subdivision ordinance. Sometimes they work, sometimes they don't. That's why we are here to make the decision on when they don't. Thank you.

Clements: Thank you Mr. Guerrettaz. Just listening to this discussion and hearing the plight of the owner and all of the hoops that they have had to jump through just in order to try to enjoy their land or to make use of their land and I find the sidewalk requirement to be burdensome to them especially as Mr. Guerrettaz said it would be add insult to injury if they were eventually required then to rip them out. That to me just doesn't make sense. So, I am inclined to vote no on it. I mean, I would grant the Sidewalk Waiver request. Mr. Pittsford.

Pittsford: Thank you. I wanted to put a finer point on what Bernie said and excuse my typing error because I was typing every quickly. My concern is ad Bernie was very clear about it is the sidewalk requirement that we have does not mean that the sidewalks installed along here would be appropriate and safe, wrong spelling there. I want to emphasize that. Our current sidewalk requirement would only require them to put a sidewalk in. It doesn't designate a way to create a sidewalk that is truly safe for pedestrians along such a busy road and I do not see the logic in requiring somebody to spend a pretty significant sum of money to lay down concrete only to have it torn back up so we can create something that is truly safe passage for pedestrians and that is my concern universally throughout the county in some of the places previously where we have required sidewalks simply by matter of code or ordinance. Thank you.

Clements: Is there any other questions or comments among the Plan Commission before I turn it over to the public? Ok, are there members of the public who are in favor of this petition? If so,

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please raise your hand. Is there anyone here that would like to speak in opposition to the petition? Raise your hand or press \*9 on your cell phone or telephone if you calling in. Ok, well, we are back to the Plan Commission for a motion. Perhaps some of these should be separated out. There is a little discussion here.

Thomas: Could we avoid having discussions in the chat? Because that is really not available to the public and that is not transparent.

Pittsford: If Bernie will, or if Geoff will enter his comment I will enter my reply.

McKim: My comment was not really directly relevant to the vote. I just said it is possible for cooperation even with split jurisdiction so for the segment north on the east side of the road, the county took the lead and footed the majority of the bill and did all of the work. But the city did help out financially somewhat from their sidewalk fund.

Pittsford: And then I would just read into the record my comment, I agree Geoff but that offer was not made by the city so when they put forward their assertion that sidewalks were necessary here they didn't couple that assertion with an offer to help pay for the cost of that and for the continuation of the sidewalk from this property north to Barge Lane where there is a gap that may very well be within the city in the future.

Clements: Ok. We are at the point of voting on this I feel. So, if there is a motion Mr. Guerrettaz?

#### **FURTHER QUESTIONS FOR STAFF – SMN-21-10 – Meska/Storms**

Guerrettaz: Yes, I will go ahead and try this. **In the matter of SMN-21-10, Meska/Storms Minor Subdivision, this is a 2 Lot Minor Subdivision Preliminary Plat, I move that we *approve* the Subdivision based on the finding that the proposed Preliminary Plat meets the Subdivision Control Ordinance, subject to the conditions;**

- 1) The petitioner address the concerns stated by the MS4 Coordinator by submitting a certified site plan for the construction of the driveway to ensure no potential SCAs are encroached upon.**

**I move that we *approve* the Sidewalk Waiver Request based on practical difficulties as stated by the petitioner in his findings, the petitioner's representative and his findings.**

**I move that we *deny* the Street Tree Waiver Request based on the findings of fact.**

Clements: Do we have a second?

Nester Jelen: Just to clarify, Bernie. Did you mean **Leonard Springs and Omaha Crossing Sidewalk Waiver?**

Guerrettaz: **Yes.**

McKim: Ok, **second.**

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Wilson: Mr. Wilson, will you please call the roll?

Pittsford: Can we clarify, did we also include the denial or did we not include the denial of Street Tree Waiver Request? I missed a part of that for some reason.

Guerrettaz: I moved that we deny the Street Tree Waiver Request.

Pittsford: Ok. But the sidewalk is approved, the denial is approved?

Guerrettaz: That was my motion, yes, sir.

Pittsford: Ok, thank you. I just wanted to clarify hear.

Guerrettaz: I was pretty choppy. Sorry about that.

Pittsford: No, that is ok. I just don't want to vote on something that I don't understand.

Wilson: Can you hear me?

McKim: Yes.

Wilson: I am having a microphone problem. Hand on a second.

Nester Jelen: If you need help Larry I can call the roll.

Wilson: Go ahead. I can't. I am getting feedback.

Nester Jelen: I will call the roll. This motion was to approve the 2 Lot Minor Subdivision with the first condition, petition address concerns stated by MS4 Coordinator submitting a certified site plan for construction of the driveway to ensure no potential SCA's are encroached upon. A recommendation of approval of approved for the Sidewalk Waiver for both South Leonard Springs Road and Omaha Crossing and a denial of the Street Tree Waiver for both South Leonard Springs Road and Omaha Crossing. Geoff McKim?

McKim: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Jerry Pittsford?

Pittsford: I am going to editorialize my vote which I try not to do but this case is another example of how the City of Bloomington's annexation plan has complicating all matters relating to County Planning and it is getting a little old. I vote yes.

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Nester Jelen: Julie Thomas?

Thomas: No.

Nester Jelen: Bernie Guerrettaz?

Guerrettaz: Yes and this is the final hearing, correct, Jackie?

Nester Jelen: I believe so on this one. Drew?

Myers: There is a waiver of final hearing.

Guerrettaz: Did we not hear this before as a first hearing?

Myers: We heard it at the Plan Commission Admin Meeting.

Thomas: Waiver of Final Hearing was not part of the motion.

Guerrettaz: Right. I understand that. I thought this was the final hearing so it wasn't necessary but I missed that in my motion. I may indulge the President if I can.

Clements: Yes, you can amend your motion and the vote could be recalled if you move to recall you vote and the person who seconded the motion would also be so kind as to approve that then I think we can go forward. I know your intention and to me that is what matters. So, if members of the Plan Commission would so allow Mr. Guerrettaz to either **make a friendly amendment to his original motion.**

McKim: Yes. Did I second it?

Clements: I think so.

McKim: **I accept that as a second if he intends to waive the final hearing.**

Clements: And my vote has not changed.

Nester Jelen: Ok, for clarity I will just recall the roll if that is ok.

Clements: Yes.

Nester Jelen: Geoff McKim?

McKim: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

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Nester Jelen: Jerry Pittsford?

Pittsford: Yes.

Nester Jelen: Julie Thomas?

Thomas: No.

Nester Jelen: Bernie Guerrettaz?

Guerrettaz: Yes.

Nester Jelen: Dee Owens?

Owens: No.

Nester Jelen: Amy Thompson?

Thompson: Yes.

Nester Jelen: Ok, the motion passes 5 to 2.

**The motion in case SMN-21-10, Meska/Storms Minor Subdivision Preliminary Plat, Sidewalk Waiver Request, Street Tree Waiver Request, Waiver of Final Hearing Requested, Preliminary Hearing, in favor of *approving* the requests for 2 Lot Minor Subdivision, Sidewalk Waiver request, and Waiver of Final Hearing, request for Street Tree Waiver has been *denied*, carried (5-2).**

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## NEW BUSINESS

### 3. REZ-21-3

#### **Worms Way Lot A Rezone from AG/RR to LI Waiver of Final Hearing Requested.**

#### **Preliminary Hearing.**

One (1) 6.65 +/- acre parcel in Section 28 of Washington Township at 7850 N Wayport RD, parcel # 53-02-28-100-006.000-017.

Owner: Ah & Sh LLC

**Zoned AG/RR.** Planner: [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)

**BOARD ACTION:** Clements introduced the petition.

#### **STAFF ACTION:**

Behrman: I am just getting myself acclimated here. I have had an unstable connection this evening. I am relying on a hotspot right now so we going to see if that experiential way works for this presentation. I am hoping everyone can hear me. Alright.

McKim: Yes.

Nester Jelen: Tammy, if you turn off you video it helps too.

Behrman: Good idea. Great. Thanks Jackie for that. Alright, so this is Worms Way Lot A Rezone from AG/RR to LI. They are requesting a Waiver of Final Hearing and I will just kind of jump into the slide program. They are wanting to rezone 6.65 acres located at 7850 North Wayport Road. This is about a mile north of the I-69 Sample Road interchange and is along a frontage road. It is in Washington Township, Section 28 and it is just 1 lot out of the Worms Way Type "A" Subdivision. There is a second lot, Lot B that is to the north that is not included in this rezone petition. This is the current zoning map. It is currently zoned AG/RR and you can see the other zoned around there are either being AG/RR or Estate Residential. The Estate Residential to the north and east is the Windsor Private Subdivision that was approved back in 1988. A lot of those homes are from the early 90's I would say and there is some Pre-Existing Business to the north which would be up toward Oliver Winery and Limited Business to the south. I wanted to make note that the nearest Light Industrial zones from this particular site are about 5.5 miles in Ellettsville and another one that I found 6.5 miles along Vernal Pike. This is what the site looks like currently. It is commercial buildings. This used to be Worms Way Hydroponics and Gardening Center and in 1995 they were granted a Special Exception by the Plan Commission and the Board of Zoning Appeals for an Agibusiness and Greenhouse Use. This is not a process that we have available today. This was pre our current ordinance, our 1997 ordinance. But because they got this Special Exception it allowed them to establish this 14,000 square foot commercial space, commercial driveways, commercial septics and parking lots and drives throughout. These are some of the site photos. It does have a commercial driveway. It fronts North Wayport Road which is now a connecting frontage road on Interstate I-69. Just a view of the different buildings around here. We do have a bioretention swale on site as well, which has not been reviewed by Stormwater. That would occur if they get to the step when they do a commercial site plan review. On the upper right corner you can see some of those residential homes that are in the Windsor Private neighborhood. I do want to point out this wooded strip that is just east of the petition site. This is a conservation area that is platted with their subdivision that cannot be developed and the

topography is as such that it is kind of a dip down and up before you actually get to these residences over here, so just to kind of familiarize yourself with the site. So, a little bit more history back in 2019 we had a Use Variance that was approved by the Board of Zoning Appeals 6/27/2019 and it was to allow for Metal Fabrication Use to be added to the existing AG/RR Uses. It was Jerden Industries that was making that petition. They were a family owned business that were established in the City of Bloomington for decades so we kind of knew what we were getting with that petition. But for whatever reason they chose to not finish the purchase of the property. I have heard various reasons why that did not happened but the Worms Way site is still vacant. I think it has been for about 6 years. I think this year we had a Use Determination Form that was submitted by the petitioner and staff reviewed this and determined that they were proposing a use for Metal Fabrication, which is actually permitted but they were also going to be doing printing. That is essentially a Multi-use. In order to allow both of those uses to occur consecutively at this site we gave them many options, I will review those in a second here but basically we thought that this might work for them to see of a Business or Industrial Center would accommodate both of the things that they wanted to do on the site and a Business or Industrial Center is permitted in these 3 zones General Business, Light Industrial and High Industrial. You can do a mix of these industrial or commercial uses with Business or Industrial Center type of multi-use and you are going to pull from various Business or Personal Services category or Retail and Wholesale Trade category and then the Manufacturing, Mining, Construction and Industrial Use category. It does require a full site plan approval if you decide to use this. So, shortly after the Use Determination a Pre-Design was scheduled with the petitioner. We really made it clear that a multi-use proposal that they have as such because a lot of record is allowed to have one primary use and this would have been essentially 2 primary uses. We did not feel that a Use Variance was an appropriate ask for the BZA. But we did recognize that the Business or Industrial Center can accommodate multi-use, so we said they could possibly rezone to one of those zones that were mentioned in the table GB, LI or HI. We also mentioned that a PUD is also a process that they could go through and also went over the pros and cons. You all have heard some recent PUD's and you know how complicated and detail oriented they are. Also noted in the Pre-Design that should a process be approved then a commercial site plan would be required. This petition has been to the Plan Review Committee twice. It went August 12, 2021 and September 9, 2021. At the September 9<sup>th</sup> meeting it was a negative recommendation of 6 to 0. At the Plan Review Committee basically you are looking at the Comprehensive Plan and does it fit. Well, the Comprehensive Plan from 2012 had this whole area slated as Rural Residential and anything looking at that Light Industrial type use just wasn't fitting into the Comprehensive Plan but we want to note that since that 2012 plan was approved we now have an interstate that runs through here which we didn't before and so there were discussions that maybe it is appropriate that the Comprehensive Plan is maybe a little outdated in this case that maybe there should be some slight flexibility because of the access to an interstate just one mile to the south. Other things that were discussed at the Plan Review Committee is that this site is not on sewer and it is very likely that it's going to be quite a while before that would even become a service that would even be available out here. We made note that there is that residential neighborhood to the north and east Windsor Private. But the Plan Review Committee was overwhelming supportive that they wanted to see a business use in these existing commercial structures. It is just that we didn't know quite how to get this to work for them. I don't know they could quite get to doing it with the rezone to Light Industrial. This is the petitioner's initial letter stating what they were wanting to do at this site here. They highlight small staff, minimal traffic, and minimal environmental impact. I hope you had a chance to read this letter.

They also have supplemented and sent in an additional form page letter with response to some of this sewer and waste water kind of debate that was talked about that the PRC Meeting. I will get into that in a moment. This is their initial site plan for the proposal here and like I said, if they are able to do this Business or Industrial Center Use or find a way to get their use approved such as a PUD later on, they would have to do a full review of site plan and make sure they are meeting all of those requirements for stormwater, road access, things like that. The Agricultural Use Table is included in the packet and I just mention it here and we see these different categories. I also include the LI Table for Light Industrial Uses and I highlight a few of these in these red boxes here. I can explain that in just a moment. Down here at the bottom if you can see, I can't see it, but I highlighted where the Business or Industrial Center is included on the table for Light Industrial zones. So, I did a little bit of a review of how the categories would be changing. Blue represents in this graph the Agricultural/Rural Reserve Uses that are currently available on site. The orange represents Light Industrial Uses and looking at these categories you will see right now what is appropriate are Agricultural and Residential Uses mostly, little bit of Public and Semi-Public but the infrastructure that is in place here may not fit all of these types of uses. Should this rezone occur you are going to see shift into more Business Personal Services, more Automotive and Manufacturing and Mining, more Light Industrial type uses. To explain the table over here, this is them more numerically spelled out but I wanted to highlight these yellow boxes. These are all of the uses that are permitted with a Business or Industrial Center and what that means is that you can have several uses on the site, multiple uses, there is not a cap, and there is not a limit. You could have 2 or you could have 5 as long as you are able to meet your parking standards, meet all of your other standards for the site, you can interchange any of those uses and have any number of them in a Light Industrial zone. Staff wanted to point that out to you. I am not sure if this little note down here is available but that is what I was summarizing. Also at the Plan Review Committee we got into discussions about waste water and if these industrial type uses were going to impact the commercial septic system. There is a 4 page letter that the petitioner sent to us. It is Exhibit 6. I really hope you have a chance to read that. They kind of go into more depth with the types of uses that they really wish to do there should they get to purchase the property and go through the site plan process and then also staff made a response. Larry put together a really good discussion about septic versus sewer and quoting his words from Exhibit 7 and he can expand on this if you want but "it is highly dependent on the type and intensity of the use like the number of employees and customers as well as the particular commercial or industrial activity on the site. The appropriateness of an on-site sewage disposal system is highly dependent on the characteristics of the site." So, it is not like we can look at our use table for Light Industrial and tell you right then and there what ones are required. We currently only have one use that actually specifically requires sewer and that is a multi-use but we have a different multi-use available for us here, so just to summarize that discussion. I am going to bring up letters of opposition. We had 8 in total that were submitted. I am just throwing up one here as an example. This was from the Vice President of the Homeowners Associate and he was discussing that there were 37 homes. That he had done a petition. We never saw that petition but he is stating that that neighborhood is not a fan of this site rezoning into the LI zone. I believe he is here this evening and you will probably hear from him and maybe some other neighbors. Highway and Stormwater. The Highway Department didn't have any comments at this time. It is a solid commercial drive there. It would be reviewed for further use during site plan review and the MS4 Coordinator also reviewed this. I think it is noteworthy that she was stating that this property does not have connection to sanitary sewer. There is an assumption that all of the processed waste water would be hauled to a waste water treatment plant

or other treatment facility if required by such OSHA standards. I believe the Use Variance they had in 2019 also dealt with that and it did sound like that Metal Fabrication Use that is what they were going to have to do was ship some of their water off-site to a treatment plants and then use commercial septic system just for regular day to day people use. The petitioner responded with a quote that is down here saying that only waste water be discharged into the septic system and so they didn't anticipate generating that much waste with their facility that they are proposing. Like I said there is a 4 page letter where he expands on this. I had some discussions after that second Plan Review Committee with the petitioner and he at this time was not wanting to make any restrictions on the number, I guess on reducing the number of uses on the site. But he did want to make one self-imposed restriction in that they would find it acceptable to make sure that all of the work was performed inside the building, that they would prohibit production of any work outside of the building, so it would all be contained within that 14,000 square feet of structures. The recommendation for the rezone REZ-21-3, to the Plan Review Committee we had kind of in air quotes done a negative recommendation because the current the 2012 Comprehensive Plan did not at all match Rural Residential, which it was give back in 2012, which was an approved plan prior to the interstate going through. We are not sure if maybe that is necessarily the appropriate designation. We are not to say it is or it isn't. But we kind of weren't sure if we could hang our hats on that Comprehensive Plan designation a lot but overall staff does recommend denial of the rezone based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports. A lot of this was partially like the access to sewer and that fact that there are numeral uses that can go on this site should it become Light Industrial in any number of fashion or configuration and there is a lot of uncertainty that kind of can go along with that so that is kind of why we are leaning toward a denial recommendation to the Plan Commission. Again, tonight you will be voting, if you vote, you would be voting on the recommendation to the County Commissioners. The Commissioners would be ultimately deciding on this. With that I am happy to take any questions.

### **RECOMMENDATION**

Staff recommends **denial** of the Rezone of based on findings of fact and subject to the Monroe County Highway and MS4 Coordinator Reports.

### **RECOMMENDATION TO THE PLAN REVIEW COMMITTEE**

Recommendation to the Plan Review Committee:

- Staff recommends forwarding a “negative recommendation” to the Plan Commission based on the petition’s incompatibility with the Monroe County Comprehensive Plan.

**However, the access to N Wayport Rd and I-69 has been completed since the adoption of the 2012 Comprehensive Plan. Staff is considerate as to whether a rezone may be appropriate for this area given the current conditions. Staff is seeking input from the PRC as to whether the Comprehensive Plan needs to be updated along this area since the completion of I-69.**

### **FINDINGS OF FACT - REZONE**

In preparing and considering proposals to amend the text or maps of this Zoning Ordinance, the Plan Commission and the Board of County Commissioners shall pay reasonable regard to:

**(A) The Comprehensive Plan;**

**Findings:**

- The rezone request is to change the zone for the petition site from Agriculture / Rural Reserve (AG/RR) to Light Industrial (LI);
- The Comprehensive Plan designates the petition site as Rural Residential;
- According to the Comprehensive Plan, Rural Residential area *“this use category includes rural property, environmentally sensitive areas, and areas adjacent to quarry operations where low densities are appropriate and desirable; however, the sparse population character of the Farm and Forest category is no longer applicable. Generally, these includes all property in Monroe County that is not within the Farm and Forest Residential area, Bloomington Urbanizing Area or a Designated Community, or an incorporated town or city.”*
- The current infrastructure on site is designed more commercial in nature and is not residential in nature;
- The current number of permitted uses in the AG/RR zone is 61. If rezoned, the petitioner would have 84 permitted uses to choose from including some limited multi-use;
- The multi-use ‘Business or Industrial Center’ could allow for a combination of uses in the Business and Personal Services, Retail and Wholesale Trade and Manufacturing, Mining, Construction and Industrial use categories that total 61 different uses;
- If denied there could still be uses permitted in the AG/RR zone plus Metal Fabrication as added in 2019 under use variance petition 1905-VAR-28;
- If approved and the owner would be required to submit a commercial site plan amendment for review by County staff;

**(B) Current conditions and the character of current structures and uses in each district;**

**Findings:**

- See Findings under Section A;
- The current use of the petition site is vacant as the previous use has not been in practice in well over 6 months;
- The site was commercially developed under a special exception (1995) to allow for ‘Agribusiness and Greenhouse’.
- The petition site includes one 14,240 sf commercial building, 1,500 sf green house, ~17,000 sf paved parking all given a condition rating of ‘A’. Bioretention and some commercial landscaping are also on site;
- The rezone request is to change the zoning for the entirety of the site to the Light Industrial (LI) District which is described by the County’s Zoning Ordinance, Chapter 802, as follows:

**Light Industrial (LI) District.** The character of the Light Industrial (LI) District is defined as that which is primarily intended for industrial uses that have minimal exterior movement of vehicles and goods. Its purposes are: to establish areas for the exclusive development of light industries; to discourage residential and commercial

uses; to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes; and to maintain the character of the surrounding neighborhood. Uses shall be restricted to activities that are not a nuisance because of dust, fumes, noise, odor, refuse matter, smoke, vibration, water-carried waste or other adverse effects on surrounding uses. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with adjacent non-industrial uses. The LI District shall provide open space, landscaping and buffering in order to achieve desirable site development.

- The petition site is currently zoned Agriculture Rural Reserve;
- There is an existing commercial driveway;
- The majority of the site is less than 15% slope (see Slope Map);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the petition site;
- There is a cemetery located on the east side of the property;
- There are vacant, open areas that could allow for more development;

**(C) The most desirable use for which the land in each district is adapted;**

**Findings:**

- See Findings under Section A and Section B;
- The surrounding parcels to the north and south are currently zoned AG/RR, and the adjacent parcels to the east are zoned Estate Residential (ER);
- Within a mile of the petition site there is pre-existing business zone to the north (Oliver Wine Company) and Limited Business (LB) to the south (Nature's Way and vacant former gas station);
- A residential neighborhood (Windsor Private) is located to the east of the petition site and the wooded common area for the subdivision is between the petition site and residential lots;
- There is a residence to the south and to the north is a vacant commercial developed lot zoned AG/RR;

**(D) The conservation of property values throughout the jurisdiction; and**

**Findings:**

- Staff fielded calls from neighboring residents in the Windsor Private neighborhood though none have submitted any letters at this time;
- Property value tends to be subjective;
- The effect of the approval of the rezone on property values is difficult to determine;

**(E) Responsible development and growth.**

**Findings:**

- See Findings under Section A, Section B, and Section C;
- According to the Monroe County Thoroughfare Plan, N Wayport Road was recently

improved as a part of the I-69 Section 5 project and is designated as a Major Collector;

- The petitioner is proposing to use the existing driveway access off of N Wayport Rd and has interstate access 0.65 miles to the south;
- There is no access to sewer on this property for future use;
- There is room for expansion on this site with more infrastructure;
- The commercial lot to the north is not included in this petition though owned by the same entity.

### **QUESTIONS FOR STAFF – REZ-21-3 – Worms Way**

Clements: Commissioner Thomas?

Thomas: Yes, thank you. I just want to reiterate that issue and I think it was raised here in the Plan Commission meeting as well but all of these meetings are starting to run together in my mind because we did talk about this twice at the Plan Review Committee, that is the concern is that this could then we might say, oh, well this seems fine, this seems it will work with septic and it is not an intensive use. This to us on the PRC, if I may say so, this was sort of the perfect fit for this property. However, that property may be sold again. I mean what happened with another company here as Tammy noted early on could happen here. They might decide not to open here and now we have rezoned it to allow for a number of activities. So the question I have is can we limit the number of activities that are allowable on this property in order to ensure that it fits with the septic, that is meets the needs of the neighbors? This would be a great use but it feels like we are trying to force square peg into a round hole here and I want to make sure that we are protecting the future as well as the present. Thank you.

Clements: Thank you.

Behrman: If I can respond. We have another Light Industrial site that I can think of that has a multi-use, this Commercial Industrial use on it and every time that they swap out tenant to fill another space they submit a Use Determination Form we evaluate the intensity of that use and what they are going to be doing there and making sure they are not going to need make any improvements to the site plan such as add parking or make sure the capacity of the septic system would be working. So we kind of do look at that with another site that we have where they just know to send us a Use Determination Form if they are filling more space up and making sure it works on the site there. But could we limit it? That would have to be either a written, I don't know if it would be written a commitment or if we could just make it condition of approval that there be a cap on the number of uses allowed on this site at any given time.

Thomas: Just to follow up, the reason I am raising this is because we kept hearing from staff that it doesn't fit this, it doesn't fit that and it doesn't and we agree. But now you are saying there is a way to do it. So, I guess that is a question for maybe Mr. Schilling and Mr. Wilson is can there a recorded commitment on use and an agreement to have a review I don't know by whom but somebody needs to review it if a different use is going in that wouldn't automatically be allowed? Thank you.

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Clements: Is Mr. Schilling or Mr. Wilson?

Schilling: I will address it. You certainly can have a written commitment to address those matters that would be recorded.

Clements: Ok, thank you Mr. Schilling. Mr. McKim.

McKim: Yes, I guess I would like to hear a little bit more about what the negative impact would be if that condition that the petitioner seems to have already offered up that all of the work would be done inside the building were put into place. I mean that seems like that is a fairly strong protection for the neighboring area especially since there is already a buffer, a pretty substantial buffer actually between this property and the neighboring property.

Behrman: Right, so I think that was something that was brought to staff's attention after the last Plan Review Committee and so I brought it up as a discussion point of if you wanted to make that a Condition of Approval or require a written commitment associated with any sort of approval that you might see happening here. Staff currently does not have anything written up as far as any recommendations.

McKim: Thank you.

Clements: Thank you. Are there any other questions or comments from members of the Plan Commission? If none, we will go to the petitioner or the petitioner's representative and you would have 15 minutes if the clock could be started.

Nester Jelen: Tammy the petitioner's name is Joe Myers.

Behrman: Correct. It might be RJ Myers.

**PETITIONER/PETITIONER'S REPRESENTATIVE – REZ-21-3 – Worms Way**

Myers: Ok, can you hear me?

Clements: Yes.

Nester Jelen: Yes.

Myers: Ok, excellent. I think it is pretty clear there are 2 major issues here that everyone has concern with. One is that it is not connected to city sewer and the other is that it might in some way negatively impact the local residents in Windsor Addition. Concerning waste water disposal I tried to get some information from the Health Department to find out how that permit was written in capacity and that sort of thing. But unfortunately that gentleman that takes care of that is apparently on vacation and didn't get to it before he went on vacation and no one else knows how to get that information. So, I had to give up on that. But as far as the impact to the, well, that we add a little bit more about that, I guess we as the petitioners, do not quite understand some of the concern with that because it is kind of assumed that we are going to abuse the septic system in

some way be contamination or overuse and we don't that would be a good business decision. I mean, I seems like it would make it very difficult if we did go to resell if we damaged it and they had to do some kind of remediation to deal with like they did the PCB's in this county. I guess we don't clearly understand that and I haven't been able to get any more information. But we do believe that we could make another stipulation that might help to some degree, which would be that we would be willing to limit the number of people working in the building at any given shift to 25. So that would reduce traffic obviously a little bit but we don't really anticipate ever growing much beyond that at that location anyway and I understand that the residents there concerned about the impact but I think their concern is kind of overstated to some degree. Because if you look around and see who are their neighbors one of them is an auto salvage yard. Now, that auto salvage yard has existed for decades and well before the addition did but they weren't concerned about their property values when they bought their plots or houses. So, I don't understand how, we being an enclosed manufacturing facility could negatively impact. I am personally, the other thing that they have pointed out in some of their opposition is that their property values are going to go down, is going to be terrible. But I don't think that all of that is necessarily a true statement either. Many years ago I started my career in Dearborn, Michigan. That is a highly industrialized county. That is where Ford Motor is located. There are several garages. There is a glass plant. There is an auto manufacturing plant and test tracks and I could not afford to live there because it is too expensive. Industry does not necessarily equate with declining property values. In that case I lived 30 miles away so I could afford to live there and work as an engineer. I could give local examples too. I happen to be a neighbor of the City of Bloomington Water Treatment Plant. It is very common to hear dump trucks dumping I don't know what they dump, I don't know what water you dump but they are always dumping something and backing up and they were there before I bought the property and I really don't think it impacts my quality of life very much. I have a buffer of trees too. They have even doubled their capacity. But yet my property values have continued to go up. They actually just sold the lot next to me that is the same size as mine for \$120,000 and all that it had on it and it was a 10 acre lot and all it had on it was a mobile home that had been modified, which they have torn down and now they are getting ready to build a house. So, I think it is not a good argument that we would necessarily negatively impact their property values. We also saw in some of the opposition that they said, why don't they just go someplace else. There is plenty of stuff that you can go lease that is Light Industrial or you can buy in other areas that is for sale. Well, we have been looking extensively for property for almost 2 years now and what we have found is that because of the renovations that are required to get to the standards we need for cleanliness within the building that many times the renovations of existing buildings would require several times the cost of the purchase of the building and we certainly don't want to spend that kind of money renovating something we don't own. So, that is reason for the homeowners to understand why we are looking where we are looking. We actually have found property and placed and offer on piece for the full asking price in Monroe County and the seller just let it expire. So, we have done and looked for existing commercial properties or industrial properties that we could use with not any real success and I guess, I think something that everyone needs to take into account is and I think that I have heard this expressed by the officials here today that something needs to be done with this property. It has been sitting for years. Well, that is true and it been beautifully maintained, so how long will that continue to happen if it doesn't get appropriate zoning? Right now it is a non-income producing property that is costing the owner I am sure thousands of dollars per year to maintain to provide a nice looking facility. I guess I would suggest that if we are not successful in getting this rezone so that we can put it to the use we are proposing,

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that the Homeowners Association consider banding together and buying the property. Then they can use it for their own purposes and free the current owner the burden of maintaining it. I welcome your questions.

Clements: Thank you Mr. Myers. Are there any other members of your team present that would like to address that Plan Commission Mr. Myers?

Myers: I don't believe so.

Clements: Ok. Mr. McKim.

McKim: Thanks. I just want to make sure I understand that this whole process is only necessary because you want to add Commercial Printing to Metal Fabrication.

Myers: Well, if you read that packet there is a broad number of things we are doing. We would also be doing Commercial Printing in ways you might not normally consider as in we might be lazer etching metal tubes and stuff like that. We are basically everything is laid out in the letter I sent in with uses that we are proposing to use it for. But pretty much any of the processes that the local medical device companies currently do and that is a good point too is I do think that since Cook Incorporated has gone in over there on Daniels Way that the property values have plunged.

McKim: I guess what I was really trying to get at was more that staff's interpretation of the ordinance was that we had to go through this rezone because Commercial Printing would have been a second use and there was no way to do a Use Variance for a second use on the property. Am I understanding that correctly or am I still missing something? Maybe that is more of a question for staff.

Wilson: I think the answer is they have a Use Variance for Metal Fabrication.

McKim: Right. I understand that.

Wilson: The basis for a Use Variance is I cannot put the property to any use so I am entitled to a Use Variance because of the nature of the building, the nature of the land and so on. The Use Variance was granted for Metal Fabrication. It is very difficult to argue that you don't have a use for the property that justifies another Use Variance. In addition from the standpoint of long-term they would have to find a buyer that would be limited to Metal Fabrication if they were going to sell it as opposed to Light Industrial that creates a broader group of potential buyers if they outgrow this facility and need to move on to a different location. I do want to mention the issue of the septic tank versus sewer. Typically, if someone is asking for an open rezone to Light Industrial we would say there needs to be access to sanitary sewer for the reason that there is such a broad number of uses and number of employees that might go into that. If you start limiting that number of employees they type of activities that are going on within a site through commitments then it is totally possible and we would address during site plan review that a septic system would be adequate. If it is properly maintained in its current standards.

Clements: Thank you. Is that all Mr. McKim?

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McKim: Thank you.

Clements: Commissioner Thomas.

Thomas: Yes, I am still finding this process incredibly confusing and convoluted but I do want to address something that the petitioner said just for clarity and then I have a question for the petitioner. The petitioner seems to think that our concern and I am sorry that I am not on video but my internet is not great but the petitioner believes that we are concerned about how he is going to use the property and actually to me that is not the concern. The concern is what happens after they move on. That is the concern and if you look at the long list of things that could be done on this property it is concerning. That is not to say that what you are doing or that propose to do so my question for the petitioner is would you be willing to work out some sort of recorded commitment regarding the use of the property and I will also note that we have to ensure that no matter how many employees you want to cap it at that that number of employees can be served with the current septic system? So, it seems like if you are willing to do this that that is something we could have you work on with staff and we could hear this maybe at the Admin. Meeting.

Clements: I think that is an excellent suggestion Commission Thomas and I also just cannot understand why we cannot find an avenue to make this work. I also am opposed to a rezone because it does have long-term implications that the neighbors have eloquently expressed their concerns about so I think the issue boils down to uses and I think that the petitioner could find a way with staff and with our administration here at our Plan Commission to try and help you get off the ground. I just really think that is important. Because it sounds like you have searched long and hard and this building has been empty for a long time. There is so much about it that is right and I don't think the rezone is the right answer for other reasons that extend beyond you. So, that being said is there a way, staff, that we can try to work with this petitioner and get them up and running without a rezone?

Wilson: Wilson: Well, it is currently zoned Agricultural/Rural Reserve and there is no potential use under that zoning for the type of using they are proposing. The Worms Way was a special exception for a garden center and greenhouse so that is how they were able to locate and build a facility and expand the facility in the AG/RR zone. However, if you want the kind of uses that are being proposed under this petition you have to rezone it to some district that allows Light Industrial, Manufacturing, Offices, Printing, Metal Fabrication and Light Industrial is the least expansive of those districts that are available.

Clements: Thank you Mr. Wilson. Mr. Guerrettaz and then Commissioner Thomas.

Guerrettaz: I guess where I am leaning with this and I remember the BZA petition on this property and it sounded a lot like what we are talking about tonight if I recall it properly. But the things that separate this I think from a lot of petitions site we look at is one if it walks like a duck, quacks like a duck, it's a duck and when you look at that facility and those buildings it does not scream AG/RR. I think the other thing, there is a little bit of a check on what can happen on those buildings because it is a built environment. We can see what it is. We can see what it is going to be. We can talk to the petitioner and find out what commitments that they can make. I think that is fine. But my feeling is that this is a LI property. It is a built environment. It is more predictable what is going

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to be there at the rezone stage and what we would see if we had a vacant property that we were looking at and the commercial septic doesn't bother me because just like the petitioner said he has already approached the county to find out what he/she/they need to be looking at in order to properly utilize this property for what their needs are. So, those are just some comments that I have. I like the rezone on this. I think it is more predictable for the neighborhood. I think when you look at it, it looks like a Commercial/Industrial type property and I think it should be labeled as such. Thanks.

Clements: Thank you Mr. Guerrettaz. Commissioner Thomas.

Thomas: Yes, I agree that a rezone is needed but I don't think that it would be accurate and useful to offer a rezone LI that is just open-ended given the septic and given the prior use of the property, so that is what I am trying to work out is if conditions can be applied if the petitioner is willing to make some recorded commitments and that we can find out the story of the septic and its capabilities and address that if it needs to be addressed. I think that would be really useful and I would like us to have the petitioner and the staff get those conditions written before we hear this officially. Thanks.

Clements: Thank you. Mr. McKim.

McKim: Yes, I will just echo pretty much what Julie just said. This is kind of a failure of our ordinance process if we can't figure out a way to allow this. But a simply open-ended rezone is probably not feasible. So, yeah I think it is time to go back and just sit down and figure out what kind of restrictions are reasonable to allow this rezone to go forward and present us with a list of restrictions that we can vote on.

Clements: Mr. Guerrettaz and then I will recognize Mr. Myers once more because he had time remaining on the clock. Mr. Guerrettaz.

Guerrettaz: Yes, just to be clear the petitioner is willing to make commitments and the staff can work with that, I fully support that. That was what I was trying to communicate. I wasn't getting sideways or disagreeing with what Julie's original comments were. If staff and the petitioner can work together to make something zero in on this property I would fully support that. So, thank you.

Clements: Ok, Mr. Myers.

Myers: Yes, there are a couple of commitments that we have kind of verbally mentioned today and one of them I think might be in writing in that we would keep all of the manufacturing within the building. I would assume that would follow any other that would have to sell and also that we could limit the staff size. We might be able to go below 25. But we have a window of opportunity to pick up work that is very quickly closing. We have seen multiple delays that have strung this out long and longer in different areas not necessarily just this procedure, process but even before this. Every day that goes by we are at greater risk of not being able to acquire the business that we are anticipating. Just want you to be aware of that and that will be potentially the loss of some business or jobs in the county.

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Clements: Thank you Mr. Myers. I am going to open it up now to members of the public. If there are members of the public who would like to speak in favor of this petition you have 3 minutes each to address the Plan Commission. Please raise your hand or press \*9 on your phone to be heard or to be recognized.

Nester Jelen: I don't see anyone Margaret that has raised their hand.

Clements; ok, so if there is no one here to speak in favor of this are there members of the public that are here is speak in opposition to this petition? If so, please raise your hand or press \*9 on your phone. I see a Mr. Michael Hostetler is here and if you could unmute yourself you have 3 minutes.

**SUPPORTERS – REZ-21-3 – Worms Way: None**

**REMONSTRATORS – REZ-21-3 – Worms Way**

Hostetler: Thank you Commissioner. Can you all hear me?

Clements: Yes.

Hostetler: Thank you. Thank you for the time. Yes, I live on 3 East Docks Berry Drive, which is part of the Windsor Private Homeowners Association and we have written a letter to the Commission as well opposing this rezoning. While I am sympathetic to any business, I just believe as my letter states clearly that type of business just does not fit in with the overall motif and the feel and the look and enjoyment of this area that we have here. I am not going to go point by point to refute everything the petitioner said, I will say that as real estate evaluation professional myself, my husband is a real estate appraiser, I can tell you without a doubt a rezone to a Light Industrial zone with have a negative impact, potential negative impact upon the real estate and residential area because it will have to be noted on any appraisal. So, there is always the likelihood that there will be a degradation in the value of the property. Beyond that we are not necessarily opposed, myself and my husband, opposed to some type of written conditions. However, I question how that will be approved and how that will ever be enforced. So, if you have a condition does it stay with the property forever? If these people, the petitioner's sells is that condition going to be kept? How do we enforce that condition? How do we track it? Those are my concerns as well. I also feel that again there are other properties. I am not going to argue with the petitioner but I just today checked on some residential, excuse me, some Light Industrial property, I don't know what all modifications he is going to make, if he is going to build a clean room or that kind of criteria but the current building that he is buying is not approved, so I am not sure I understand that complaint whatsoever. So, again, I just want to make also real clear we just have a few seconds here left but there were statements by the staff that now we I-69. Yes, we now have the designation of I-69 but it was State Road 37 for years and years before that so all we really do have is the same roadway, it is just now we have an off-ramp there instead of a turn. I don't think that really has much to do with anything. I just feel like while I am sympathetic to the petitioner, I just don't feel that this fits in with the overall area that we have. It is zoned correctly and a rezone would allow anything to come in there including Mining and all of these other industrial activities and I just think it is a bridge too far.

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Clements: Thank you, Mr. Hostetler and I also see that there is a Mr. Brian Booze who would like to speak for 3 minutes. Mr. Booze?

Booze: Yes, can you hear me now?

Clements: Yes.

Booze: Ok, thank you and I appreciate everyone's time. I commented in the previous meetings a little bit in opposition to this. I did want to say the letter was depicted earlier. I represent the Board on Windsor Private Homeowners Association. I am currently the Vice President of it. We did after the previous few meetings and a lot of the information that came out in the packets, we did take a formal and the results as indicated in the letter were unanimous, so, I am speaking not so much as an individual but as representing the Board. It was unanimous that we thought this should be rejected. The biggest reason and it has been said two or three different times here now was not necessarily aimed at this particular petitioner but going to LI opens the flood gates on what might come next for that same property and that other people have put in their specific objections but that seems to be the overriding thing, that this group may or may not operate on a very small scale. One thing that they just mentioned was they will move all manufacturing indoor. Well, quite honestly a lot of manufacturing places it's all indoors but there is usually a lot of exhaust when you are talking about injection molding, machining and all of that, certain things exhaust outside whether or not they actual activity is indoor or not, so there is still an impact to having a manufacturing facility right next door. But again, our big concern is once it is LI I think I just heard that this statement that is a bridge too far, I think that is a good way to phrase it. Once it is LI in this organization for whatever reason departs, sells, whatever, the flood gates are open for what comes next and there is just no control of that at that point in time for a facility that is right next to a residential area like this. That is it. I appreciate everybody's time. Thank you.

Clements: Thank you, Mr. Booze. Are there any other members of the public who are here to speak in opposition to this petition? If, so please raise your hand or press \*9 on your phone.

Nester Jelen: I don't see anyone Margaret.

Clements: Ok, we go back to the petitioner for a 5 minute response. Mr. Myers.

Myers: Can you hear me ok?

Clements: Yes.

Myers: I don't really have a lot of response. We are willing to work with Planning to come up with some reasonable controls. I don't think that anything I can say would convince any of the opposition to change their minds on any of this. I don't see how, I mean, I understand there are by-products of any kind of process. We had a rather large manufacturing facility called GE on Curry Pike and it was adjacent essentially to Highland Village but I didn't see people trying to move or property values declining because they were close to a place of employment for many of the people. So, I do agree that if you put down that your property is next to Light Industrial for some people that might be a deterrent. If you are in a floodplain that might be a deterrent to some people

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and I didn't hear them also volunteer to try and band together to purchase the property so they can continue to control it. But if we don't make any changes in what is going on around us we are not going to make improvements, we are not going to make progress. That is really about all I have to say.

Clements: Thank you Mr. Myers. I bring back now to the Commission for further discussion and/or a motion. Are there members of the Plan, Mr. McKim and then Mr. Pittsford?

**ADDITIONAL QUESTIONS FOR STAFF – REZ-21-3 – Worms Way**

McKim: Only that I would like to see a solution here. I mean out of 6 members of the Pan Review Committee although they oppose this particular petition as is they all seem to agree that the business use of this site needs to continue. We just need to figure out a solution and so I hope by not taking a final vote this month just letting it go to final hearing will give Planning staff and the petitioner time to come up with a reasonable set of controls to get a majority votes of the Plan Commission and Board of Commissioners. But I definitely support moving forward on allowing continuing businesses on the property. I encourage the petitioners on the growth of their business and I'm glad that you are still interested in continuing to invest in Monroe County.

Clements: Thank you Mr. McKim. Mr. Pittsford.

Pittsford: Thank you President Clements. My question is for staff or any one capable of answering. When we talk about impact on adjacent neighbors I thought I saw in the map depiction that there is clearly a separation between Residential and Light Industrial uses here that is accomplished through a tree line that I believe is in control of the property owners in the residential application and then the next question is to what extent does the tree line serve as a sound and odor barrier from any Light Industrial application that may be applicable under this zoning?

Clements: Thank you Mr. Pittsford. Commissioner Thomas. Yes, I am wondering if anybody would be opposed since it sounds like things are time sensitive for this company, if anybody would be opposed to hearing this at our Administrative Meeting instead of waiting a month just make it 2 weeks?

Pittsford: I am in support of that.

Clements: I am too.

McKim: I am good with that.

Clements: Mr. McKim did you have a question?

McKim: No, I was just saying I am in support of that.

Clements: Commissioner Thomas do you have anything further?

Thomas: No, thank you.

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Clements; Ok, Mr. Wilson.

Wilson: I just wanted to note that if you want to do that you will need to continue this hearing to the Administrative Meeting because the Administrative Meeting typically is not a hearing so we need to just continue the hearing. The motion would need to continue the hearing on this petition to the Administrative Meeting.

Clements: Thank you.

Pittsford: I am prepared to make that motion if somebody will give me the case number because I have not written that down and it is hard to flip between screens.

Clements: The case number is REZ-21-3, Worms Way Lot A Rezone from AG/RR to LI, Waiver of Final Hearing Requested.

### **FURTHER QUESTIONS FOR STAFF – REZ-21-3 – Worms Way**

Pittsford: Ok I am going to truncate my motion. Thank you for all of the information that will be reflected in the minutes of this meeting. **In case number REZ-21-3, a petition for rezone by a property commonly known as Worms Way, I move that we advance this to the Administrative Meeting for the month of October, meeting date of October 5, 2021, for the purpose of clearly settling this petition and the request for Waiver of Final Hearing would also be included in that action.**

Clements: Mr. Wilson has his hand raised. We can't hear you.

Wilson: I'm sorry, it just didn't lower the last time I spoke.

Clements: Ok, so if there is a second on Mr. Pittsford motion?

Thomas: **Second.**

McKim: Just to clarify, we are continuing the hearing to the Administrative Meeting.

Pittsford: Yes, that was motion. If I am in error, I am willing to be corrected.

Clements: Mr. Wilson, will you please call the roll on the motion to continue?

Wilson: The is REZ-21-3, Worms Way Lot A Rezone from AG/ RR to LI, owner AH & SH, LLC. The motion is to continue to the October 5<sup>th</sup> Administrative Meeting, continue the hearing including the issue of Waiver of Final Hearing. A yes vote is a vote to continue the hearing until the Administrative Meeting. Dee Owens?

Owens: Yes.

Wilson: Jerry Pittsford?

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Pittsford: I am going to vote yes and I am going to request that the petitioner look at the uses and present a modified use list as appropriate to their preferences prior to that meeting.

Wilson: Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Wilson: The motion to continue the hearing to the October Meeting by a 7 to 0 vote.

**The motion in case REZ-21-3, Worms Way Lot A Rezone from AG/RR to LI, Waiver of Final Hearing Requested, Preliminary Hearing, in favor continuing this case to the October 5, 2021 Administrative Meeting of the Plan Commission, carried unanimously (7-).**

**NEW BUSINESS**

**4. 2009-SMN-09**

**Deckard Farms Minor Subdivision Preliminary Plat  
Sidewalk Waiver Request.**

**Utility Waiver Request.**

**Waiver of Final Hearing Requested.**

**Preliminary Hearing.**

Two (2) parcels on 36.89 +/- acres located in Section 23 of Richland Township at 3807 W Walcott RD.

**Zoned AG/RR. Contact [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)**

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:**

Behrman: You will notice that this is one of our older numbers. This was filed over a year ago and we are hoping that it is good to go now at this point. So, yes, the request is to do a 2 Lot Minor Subdivision. They are requesting a Sidewalk Waiver. The requirement is that they install a 5' wide sidewalk along about 180 linear feet of Harrell Road and then there is a Utility Waiver request as well. The 2 lots that they are creating 1 would be 10 acres with almost 4 acres of buildable area and the other would be a 27 acre lot with over 22 acres of buildable. This is a brief look at what the plat looks like. Initially when it was being heard way back in February by the Plat Committee for the first time they had a driveway entrance that was coming off of this. They did not have a direct easement. We had recommended during a pre-design previously before that they get this established easement platted through the subdivision that is here to the north. They were finally able to complete that process. So, that is why they are here. So, this is the 10 acre Lot number 1 and the 27 acre Lot number 2. This is location, sorry it is on Hartstrait Road here and this is Walcott and there entrance is going to be off of Walcott Lane. It is currently zone AG/RR. I will note that they will be meeting all of the design standard criteria with their proposed subdivision. These are some of the site conditions. There is some floodplain up here north and east of the site and this is the existing driveway that cuts additional property that is theirs that was platted previously. In order to kind of make this an acceptable plat for us the driveway was slightly relocated out of the floodplain and that allowed us to find that acceptable with our Subdivision Control Ordinance and then again they also platted this easement so they did have this good, existing access in an easement that we could support. This is an aerial view of the driveway to the existing home. We do have conformation from the Highway Department that the Right of Way Permit RW-21-219 is acceptable. There is a little bit more to complete on that driveway relocation where they would be removing the old one and establishing the new one but Ben Ayers was able to get out there and inspect it and he thinks it is just about ready. There is just a few final steps. This is John R. and Mary Deckard Minor Subdivision Amendment 1 Final Plat that was just recorded a couple of months ago and this is where we were recording this easement and also relocating the driveway through that process. Because of this process getting completed the Plat Committee heard this petition again on August 18, 2021 and gave it a positive recommendation of 3 to 0. There are a few of the other site overheads. I will say that this is the 180 foot stretch along North Hartstrait Road that requires a 5' sidewalk and they are requesting a waiver from that and just an overview of the house and the existing ag structure that is on site. They do have a lot of cattle here. I got to see them all bunched up out by the building when I was out visiting. These are some site photos along North Hartstrait Road. You can see this is where the sidewalk would be required to be. This

is just looking out toward the petition site in the bottom photo there. So, staff is actually wanting to see the sidewalk go in here. We are going to be making a recommendation of denial for the waiver mostly because this is in the Monroe County Urbanizing Area that is what is triggering the sidewalk. We also see that Harstrait Road is within the Monroe County Alternative Transportation Plan. This yellow depicts where the site is. This is Walcott Road. The orange along the top here, there is no way we can require any sidewalks for this particular petition but along this we do see it as part of the vision map for road improvements and opportunities. One item I am also going to note here is that Hartstrait Road is 4.47 miles long and there is 1 property along that entire stretch of road that has sidewalks, kind of far out towards the north here. But I think that is a significant finding of fact. This again is the plat that they are looking to approve at this meeting, the Preliminary Plat and again, along with it is that Sidewalk Waiver for the 180 feet and also to waiver the underground of the utilities, which staff is supporting. Because though there is floodplain north and east of the site there is still some drainage areas and wet areas and this terrain right here is quite steep. This driveway is quite a steep drive up that is existing and it does seem like staff can find support to not burying utilities as it might cause more environmental damage than anything else. Just a summary of infrastructure, we have got North Hartstrait as a major collector but they are not proposing their driveway along that area. It would be coming of a shared driveway over West Walcott Road. There is a tree preservation area for the 5 required street trees. The Utility Waiver has been proposed for this so that they do not need the underground existing or future utilities and then also we do have septic permits for both lots. One is a new permit and the other is a real estate inspection for the existing and also there are capacity letters on file for both Duke Energy and Van Buren Water. This is the petitioner's representative put together findings for the Sidewalk Waiver and I know there were utility findings as well. I don't think I have those in here. Maybe they are. Actually these might be the ones. Yes, these are Utility Waivers on this side of the screen and Sidewalk Waivers on this side. Staff is recommending for petition 2009-SMN-09 that you approve the Minor Subdivision Preliminary Plat, based on the findings of fact, subject to the Monroe County Highway Engineering and Drainage Engineering reports. Staff recommends to deny the Sidewalk Waiver request based on the findings of fact, specifically Findings 1 & 2 and subject to the Monroe County Highway Engineering and Drainage Engineering reports. We move to approve the Utility Waiver based on the findings of fact and subject to the Monroe County Highway Engineering reports. Does anyone have any questions?

### **RECOMMENDATION**

**Approve** the Minor Subdivision Preliminary Plat based on the findings of fact, subject to the Monroe County Highway Engineering and Drainage Engineering Reports. **No staff conditions.**

**Deny** the Sidewalk Waiver request based on the findings of fact, specifically Findings 1 & 2, and subject to the Monroe County Highway Engineering.

**Approve** the Utility Waiver request based on the findings of fact and subject to the Monroe County Highway Engineering.

### **FINDINGS OF FACT - Subdivisions**

#### **850-3 PURPOSE OF REGULATIONS**

(A) To protect and provide for the public health, safety, and general welfare of the County.

**Findings**

- The site is currently zoned Agriculture/Rural Reserve (AG/RR);
- Approval of the subdivision would create two (2) lots that exceed the minimum lot size requirement for the Agriculture/Rural Reserve (AG/RR) Zoning Designation;
- Approval of the subdivision would result in Lot 1 = 27.08 acres and Lot 2 = 10 acres;
- The proposed use in the subdivision is residential and agricultural;
- Each lot can be served by a private septic system;
- Capacity letters for electric and water have been provided;

- (B) To guide the future development and renewal of the County in accordance with the Comprehensive Plan and related policies, objectives and implementation programs.

**Findings**

- See findings under Section (A);
- The Comprehensive Plan designates the site as Farm and Forest, which is described in this report;
- The surrounding uses are primarily agricultural and residential in nature;

- (D) To provide for the safety, comfort, and soundness of the built environment and related open spaces.

**Findings**

- See findings under Section (A) & (B);
- The property maintains frontage along N Hartstrait Road;
- The proposed subdivision is meeting the Monroe County Zoning Ordinance’s Buildable Area requirement;

- (D) To protect the compatibility, character, economic stability and orderliness of all development through reasonable design standards.

**Findings**

- See findings under Section (A);
- The adjoining properties are zoned Agriculture/Rural Reserve (AG/RR);
- N Hartstrait Road is classified as a “Major Collector” per the Monroe County Thoroughfare Plan and 45’ of right of way has been dedicated on the plat;
- A driveway permit application has been reviewed and a shared driveway off of W Walcott Road is pending approval;

- (E) To guide public and private policy and action to ensure that adequate public and private facilities will be provided, in an efficient manner, in conjunction with new development, to promote an aesthetically pleasing and beneficial interrelationship between land uses, and to promote the conservation of natural resources (e.g., natural beauty, woodlands, open spaces, energy and areas subject to environmental constraints, both during and after development).

**Findings**

- See findings under Sections (A), (C), and (D);
- There a sidewalk waiver being requested with this petition;
- An undergrounding utilities waiver has been requested;
- There are karst features on the property and have been platted with a Sinkhole Conservancy Area;
- There is a perennial stream in the northeast portion of the lot but it is not considered a regulated floodplain;
- Drainage easements have been placed on the plat per recommendation from the MS4 Coordinator;

(F) To provide proper land boundary records, i.e.:

(4) to provide for the survey, documentation, and permanent monumentation of land boundaries and property;

**Findings:**

- The petitioner has submitted a preliminary plat drawn by a registered surveyor.
- (5) to provide for the identification of property; and,

**Findings:**

- The petitioner submitted a survey with correct references, to township, section, and range to locate the parcel. The petitioner has provided staff with a copy the recorded deed of the petition site;
- (6) to provide public access to land boundary records.

**Findings**

- The land boundary records are found at the Monroe County Recorder’s Office and, if approved, this petition will be recorded there as a plat. The plat must comply with Chapter 860 - Document Specifications to be recorded;

**FINDINGS OF FACT – WAIVER OF SIDEWALK REQUIREMENT**

The petitioner is requesting a waiver from the *Improvement, Reservation and Design Standards* outlined in 856-40 (A) (Sidewalks), which reads:

- (A) Sidewalks shall be included within the dedicated, unpaved portions of the rights-of-way when any of the following are applicable:
- (3) the proposed subdivision is within the Urban Service boundary as shown in the comprehensive plan, or;

Section 850-12 of the Monroe County Subdivision Control Ordinance states: “The Commission may authorize and approve modifications from the requirements and standards of these regulations (including the waiver of standards or regulations) upon finding that:

**1. Practical difficulties have been demonstrated:**

**Findings:**

- The petitioner is requesting a waiver from the N Hartstrait Road required 5' sidewalks along 180 linear ft;
- The sidewalk improvements are required due to the petition site meeting the criteria described in 856-40 (A) (3) above;
- The site gains access from N Hartstrait RD, designated a Major Collector in the Monroe County Thoroughfare Plan;
- Sidewalks do not currently exist adjacent to the petition site in either direction;
- The requirement is that sidewalks be constructed within the right-of-way along the petition site's frontage of N Hartstrait for 180', unless the waiver is granted;
- There are no obvious existing physical constraints, including steep slopes and vegetation, where the sidewalk would be required along N Hartstrait Road;
- The total length of required sidewalk for which the waiver is requested is approximately 180';
- Practical difficulties have not been demonstrated;

**2. The requested modifications would not, in any way, contravene the provisions of the Zoning Ordinance, the Comprehensive Plan or the Official Map of the County;**

**Findings:**

- See findings under Section (1);
- The petition site is located in the Monroe County Urbanizing Area as designated by the Comprehensive Plan;
- The Comprehensive Plan calls for transportation alternatives throughout Monroe County;
- The 2018 Monroe County Transportation Alternatives Plan lists N Hartstrait Road as "High Priority for Road Improvement Opportunity";

**3. Granting the modifications waiver would not be detrimental to the public safety, health, or welfare and would not adversely affect the delivery of governmental services (e.g. water, sewer, fire protection, etc.):**

**Findings:**

- See finding under Sections (1) and (2);
- The absence of a sidewalk would not have a detrimental relationship to the delivery of governmental services (e.g. water, fire protection, etc.) to the proposed subdivision lots;
- There is one additional property with sidewalks along the 4.43 miles of N Hartstrait Road;

**4. Granting the modifications would neither substantially alter the essential character of the neighborhood nor result in substantial injury to other nearby properties;**

**Findings:**

- See findings under Sections (1), (2), and (3);
- Approval of the waiver would not substantially alter the essential character of the

neighborhood., as there are no sidewalks that exist near the petition site and the proposed subdivision would only create one additional lot;

- 5. The conditions of the parcel that give rise to the practical difficulties are unique to the parcel and are not applicable generally to other nearby properties;**

**Findings:**

- See findings under Section (1);

- 6. Granting the requested modifications would not contravene the policies and purposes of these regulations;**

**Findings:**

- See findings under Sections (1), (2), and (3);
- Granting the requested modification would not contravene the policies and purposes of these regulations;

- 7. The requested modifications are necessary to ensure that substantial justice is done and represent the minimum modifications necessary to ensure that substantial justice is done;**

**Findings:**

- See findings under Sections (1), (2), and (3);
- The requested modification is necessary to ensure that substantial justice is done and represent the minimum modification necessary;

- 8. The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant; and,**

**Findings:**

- See findings under Sections (1) and (7);
- The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant;

- 9. The practical difficulties cannot be overcome through reasonable design alternatives;**

**Findings:**

- See findings under Section (1);

In approving modifications, the Commission may impose such conditions as will in its judgment substantially secure the objectives of these regulations.

**FINDINGS OF FACT – WAIVER OF UNDERGROUND OF UTILITIES**

The petitioner is requesting a waiver from the *Improvement, Reservation and Design Standards* outlined in 856-41 (Utilities), which reads:

All utilities, including but not limited to gas, sewer, electric power, telephone and CATV shall be located underground throughout the subdivision.

Existing utility lines located above ground on public roads, rights-of-way or in easements serving other property are exempt from this provision.

Existing utility lines servicing residential and residential accessory structures shall be removed and placed underground unless waived.

Waivers from these provisions for existing utility lines may be granted subject to the waiver modifications in Chapter 850-12, Sections A through D, excluding sections 5, 8, and 9. Waivers may be granted via the following process:

1. for Subdivisions of more than 4 Lots by the Plan Commission
2. for Subdivisions of 4 Lots or Less by the Plat Committee

All utility lines and other facilities existing and proposed throughout the subdivision shall be shown on the preliminary plat. Underground service connections to the street property line of each platted lot shall be installed at the Subdivider's expense. At the discretion of the Commission, the requirement for service connections to each lot may be waived in the case of adjoining lots that are to be retained in single ownership and that are to be developed for the same primary use.

Section 850-12 of the Monroe County Subdivision Control Ordinance states: “The Commission may authorize and approve modifications from the requirements and standards of these regulations (including the waiver of standards or regulations) upon finding that:

**1. Practical difficulties have been demonstrated:**

**Findings:**

- A perennial stream bisects the petition site;
- The stream runs between the existing driveway and the existing home on Lot 1;
- There are slopes greater than 15% leading up to the existing home and if utilities are buried could result in some erosion issues;
- To underground electric under the perennial stream and up the steep sloped terrain is a practical difficulty;

**2. The requested modifications would not, in any way, contravene the provisions of the Zoning Ordinance, the Comprehensive Plan or the Official Map of the County;**

**Findings:**

- See findings under Section 1;
- The Subdivision Control Ordinance calls for utilities to be placed underground in all

subdivisions, except on public roads and rights-of-way or in easements serving other property;

- The Subdivision Control Ordinance provides the following definitions related to easements and right of way:

### **852-2. Definitions**

#### **Easement.**

A right of use over designated portions of the property of another for a clearly specified purpose.

- 3. Granting the modifications waiver would not be detrimental to the public safety, health, or welfare and would not adversely affect the delivery of governmental services (e.g. water, sewer, fire protection, etc.):**

#### **Findings:**

- The Subdivision Control Ordinance calls for utilities to be placed underground in Minor subdivisions, except on public roads, in rights-of-way, or in easements serving other property;
- The ordinance states ‘Existing utility lines servicing residential and residential accessory structures shall be removed and placed underground unless waived’;
- The petitioner has applied for a waiver from Chapter 856-41 due to the rural nature of the petition site and the perennial stream that bisects the petition site;
- The existing overhead utility line does not appear to serve another property and is not exempt from undergrounding provisions;
- Occupants of the petition site will continue to be serviced regardless of the location of the lines above- or below ground;
- Any future power lines needed for further development would have to be buried;
- If the overhead utility line waiver is approved, it will apply to the existing and future lines only;
- Advantages and disadvantages exist in undergrounding electric lines both of which involve safety hazards.

- 4. Granting the modifications would neither substantially alter the essential character of the neighborhood nor result in substantial injury to other nearby properties;**

#### **Findings:**

- Waiver approval would permit existing conditions to persist;
- Burying in flooded area may make the lines be more vulnerable to damage from water intrusion;

- 5. The conditions of the parcel that give rise to the practical difficulties are unique to the parcel and are not applicable generally to other nearby properties;**

#### **Findings:**

- See findings under items 1-4 above;

**6. Granting the requested modifications would not contravene the policies and purposes of these regulations;**

**Findings:**

- See findings under #2 and #3 above.

**7. The requested modifications are necessary to ensure that substantial justice is done and represent the minimum modifications necessary to ensure that substantial justice is done;**

**Findings:**

- The improvement is required due to the proposed subdivision of the property;
- The Subdivision Control Ordinance calls for utilities to be placed underground in all Minor subdivisions, except on public roads, rights-of-way, or existing easements that serve other property;
- The existing overhead utility line serves only the petitioner's parcels as it travels south from the north property line;
- Occupants of the petition site and sites served by the overhead utility lines will continue to be serviced regardless of the location of the lines above- or below ground;
- The installation of utilities underground is consistent with the policies and purposes of all relevant regulations.

**8. The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant; and,**

**Findings:**

- (See findings under #1 & #7 above);

**9. The practical difficulties cannot be overcome through reasonable design alternatives;**

**Findings:**

- (See findings under #1 & #7 above);
- The installation of utilities underground is consistent with the policies and purposes of all relevant regulations.

In approving modifications, the Commission may impose such conditions as will in its judgment substantially secure the objectives of these regulations.

**QUESTIONS FOR STAFF – 2009-SMN-09 - Deckard**

Clements: Do members of the Plan Commission have questions for Ms. Behrman? I don't see any hands raised so we go to the petitioner or the petitioner's representative.

Behrman: I believe Eric Deckard is here.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –  
2009-SMN-09 - Deckard**

Clements: Mr. Deckard you will have 15 minutes to present this to the Plan Commission.

Deckard: Thank you and I also want to thank staff for their very professional work. I would also like to echo Mrs. Behrman's response to there is no sidewalks in this area for great links in either direction. I would also like to state that this is a working farm. They want to keep it as a working farm and the whole circumstances around this and reason for the subdivide is Mr. Deckard would like to build another home on Lot 2. As you can see, he has also went through the extra efforts of cleaning up the easements by doing a Plat Vacation on property to the north, moving his driveway and he is also dedicating right of way along Hartstrait Road that would provide for ample space for a sidewalk in the future if need be. I think that his efforts shouldn't go unnoticed and some leniency in this case should be considered by the Plan Commission. That is all that I have got and if anybody has got any questions I would be glad to answer them.

Clements: Thank you so much Mr. Deckard. Do any members of the Plan Commission have questions for Mr. Deckard? Mr. Pittsford.

Pittsford: Thank you President Clements. Eric, I am familiar with the area. The sidewalks out there are disconnected from any kind of sidewalk and actually are falling into disuse and deterioration. Is that correct?

Deckard: Yes. There are no sidewalks in this area that I am aware of.

Pittsford: I thought we had a sidewalk to nowhere near the intersection of Hartstrait and Woodyard there.

Deckard: Woodyard, so that would be quite a bit north of us. I am not really sure what the conditions of that sidewalk is.

Pittsford: Tammy, I thought you had observed a sidewalk. Can you tell me where you saw that, Tammy?

Behrman: Right, I think, let's see if I can get a better map up that would depict it. I think it was like right up here and it was a corner lot.

Pittsford: Yeah, that is Woodyard Road.

Behrman: It was that one corner lot that had the entire stretch. There are drainage ditches that almost look like sidewalks but they are clearly just concrete.

Pittsford: Right and I think the sidewalk that exists there is probably all be 3 and half feet wide.

Behrman: Yes, very tiny.

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Pittsford: Right, so to think that there is any opportunity for connecting sidewalk here is not logical to me. The only thing I would possibly entertain would be a sidepath alternative because I do realize that we have a Rails to Trails project that is running down along Woodyard, so giving an opportunity for people to have a sidepath along Hartstrait to Woodyard where they could get access that Rails to Trails project that eventually would connect with Karst Farm Park Greenway I may be going to entertain that. But the sidewalk here is inconsistent with what exists and is unlikely to be consistent with anything existent in the near future or even the distant future. Thank you.

Clements: Thank you Mr. Pittsford. Are there other members of the Plan Commission who would like to discuss or ask questions of Mr. Deckard or make comments?

Nester Jelen: Margaret, I will also note the other Mr. Deckard, the actual petitioner, is wishing to speak as well when the time is right and correct me if I am wrong Eric, there is no actual relationship, familywise of you and the petitioner. Is that correct?

Deckard: None that I am aware of.

Nester Jelen: Ok just a shared last name, just to clarify.

Clements: Thank you Mr. Deckard. Ok, Mr. McKim, is it ok if we defer to Mr. Deckard?

McKim: Sure, I have a question for Erick Deckard but that's fine.

Clements: Ok, let's here from Mr. Stephen Deckard.

S. Deckard: Thanks for hearing me. Thank you for going over the sidewalk. That is my main issue here is putting the sidewalk in. That sidewalk you were talking about on Woodyard Road on the corner, it is in disarray. It is crumbling. It is 3 and half feet wide, so if you were to connect them together you are going to have to totally redo it and there are no other sidewalks around. To put a sidewalk in is like putting a pink elephant in a room, you are going to see it and point at it but you are not going to use it in this particular area. The hopes of connecting sidewalks together futile at this point maybe in another ten years, another fifteen years and you might be able to connect sidewalks together but by that time this one will have to be replaced. I see his point of making an access so they could walk over Walcott and down Walcott and go over to the Rails and Trails they are getting ready to put in on Woodyard but they would be able to use this 180 feet for 180 feet then would have to trape in someone's yard or walk pack down into Harstrait Road. If you have ever been on Harstrait Road you don't want to walk it period just because traffic goes a lot faster than 40 miles an hour. But that is my main concern. Yes, that is a hay field. So, basically that is taking hay out. We are trying to leave this as a farm so I really wish you would consider waiving the sidewalk at this time but I understand your visions for down the road but there again those are visions down the road. If you want a sidewalk there treat like you did on Vernal and just put a sidewalk through. I mean, you did it on Vernal without all of the customers or house residents help. If you want Harstrait do the same thing. But right now putting one there would be a waste of resources, a waste of material, a waste of time and a waste of money. So, that is all that I have to say about that one.

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Clements: Thank you Mr. Deckard. Commissioner Thomas.

Thomas: Well, actually Mr. McKim was before me.

Clements: Oh, I am sorry. He took down his hand and now I see it again. Mr. McKim.

McKim: Thank you. Yes, Mr. Eric Deckard made a comment about the petitioner committing some kind of sidewalk easement. That sort of went by me. What is that you were saying about that?

E. Deckard: I think that I was referring to the dedication of the right of way along Harstrait Road. There is going to 45' of right of way dedicated from the center of the road back toward the farm to the east and that would leave ample space there to construct a sidewalk in the future if need be.

McKim: Yes, it would. Thank you.

Clements: Commissioner Thomas.

Thomas: That was actually my question but I wanted to direct to the Highway Department as to whether or not there is sufficient right of way to build that I guess what was 180' but that small section to connect to the trail. Is there sufficient right of way to go ahead and complete that if we move forward with this and if not do we need to get an easement? Thanks.

Clements: So, if Highway is here and can answer that question.

Nester Jelen: Paul. It looks like Paul is still on mute.

Satterly: Sorry. Could you repeat the question again?

Clements: I think her question is whether or not the area that Mr. Deckard and Mr. Deckard and set aside is adequate for future consideration of sidewalk should one become advisable on Harstrait Road.

Thomas: Specifically to connect to the trail.

Satterly: You have got what 45' right of way set aside.

E. Deckard: That is correct.

Satterly: That should be more than adequate for any future trails and sidewalks.

Clements: Do you have any further questions Commissioner Thomas of Mr. Satterly?

Thomas: No, thank you.

Clements: Thank you. Ok, we are back to members of the Commission for any further discussion

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before we open it up to the public. Mr. Pittsford?

Pittsford: Was there a request for Waiver of Final Hearing or Second Hearing?

Clements: Yes.

Pittsford: I skimmed it I didn't look really closely.

Clements: Yes.

Pittsford: There is. Ok, thank you.

Clements: Ok. Are there members of the public who would like to speak in favor of this petition? If so, please raise your hand or press \*9 on your phone.

Nester Jelen: I don't see anyone Margaret.

Clements: Ok. Are there members of the public who are in opposition to this petition? If so, please raise your hand or press \*9 on your phone.

Nester Jelen: I don't see anyone.

Clements: Ok, back for a motion if there is any member of the Plan Commission who would make a motion. Mr. Pittsford.

Pittsford: I am prepared to make a motion.

Clements: Thank you.

**SUPPORTERS – 2009-SMN-09 – Deckard: None**

**REMONSTRATORS – 2009-SMN-09 – Deckard: None**

**ADDITIONAL QUESTIONS FOR STAFF – 2009-SMN-09 – Deckard: None**

**FURTHER QUESTIONS FOR STAFF – 2009-SMN-09 - Deckard**

**Pittsford: In case number 2009-SMN-09, Deckard Farms Minor Subdivision request for Preliminary Plat to subdivide one parcel into 2 lots along with a Sidewalk Waiver request Utility Waiver Request, and a Waiver of Final Hearing, this property is located at 3807 North Walcott Lane in Richland Township and it is comprised of 36.89 acres, plus or minus in the AG/RR category, I move approval of the Minor Subdivision Preliminary Plat, based on the findings of fact and subject to the Monroe County Highway and Engineering and Drainage Engineering reports. I recommend approval of the Sidewalk Waiver request, based on the fact that there is adequate right of way in the proposed subdivision to provide for any future sidewalk or sidepath and I further add that I would recommend approval of the Utility**

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**Waiver request, based on the findings of fact and subject to the Monroe County Highway and Engineering and finally that we waive the requirement of final hearing.** That is motion at this time.

Guerrettaz: I will **second** that.

Clements: Thank you Mr. Guerrettaz.

Wilson: I will call the roll on 2009-SMN-09, Deckard Farms Minor Subdivision Preliminary Plat. The motion is to approve the Preliminary Plat for the minor subdivision along with the sidewalk waiver request and the utility waiver request and the request to waive final hearing. The sidewalk waiver request is based upon amended findings that there are a lack of pre-existing sidewalks in the neighborhood and that right of way will provide adequate space for future construction of any planned sidewalks. Again, a motion in favor is a vote to approve the minor subdivision with all waivers. Jerry Pittsford?

Pittsford: Yes.

Wilson: Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Wilson: Dee Owen?

Owens: Yes.

Wilson: The motion is approved by a 7 to 0 vote.

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**The motion in case 2009-SMN-09, Deckard Farms Minor Subdivision Preliminary Plat, Sidewalk Waiver Request, Utility Waiver Request, Waiver of Final Hearing Requested, Preliminary Hearing, to approve all requests, with amended findings (Sidewalk Waiver), carried unanimously (7-0).**

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## NEW BUSINESS

### 5. REZ-21-4

#### **Hamilton Rezone from RE1 to AG/RR**

#### **Waiver of Final Hearing Requested.**

#### **Preliminary Hearing.**

One (1) 134.5 +/- acre parcel in Section 8 of Bloomington Township at 1300 W Bell RD, parcel #53-05-08-300-007.000-004.

Owner: Hamilton, Jeffrey A & Jean Messenger

**Zoned RE1.** Planner: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

**BOARD ACTION:** Clements introduced the petition.

#### **STAFF ACTION:**

Myers: Can you all hear me ok?

Clements: Yes.

Myers: Great. Alright. This is one petition site totally 134.5 acres in Bloomington Township. The petitioner is proposing to amend the zoning map from Estate Residential 1or RE1 to Agricultural/Rural Reserve or AG/RR for short. If the rezone request is approved by the County Commissioners the petitioner intends to petition for a Sliding Scale Subdivision, which is limited to only the AG/RR, FR and the CR district in order to subdivide off the existing house in a 2.5 acre tract and keep the remainder of the petition site in classified forest and tree plantings. A Sliding Scale Subdivision petition for this property will likely be heard by the Plan Commission as a Road Width Waiver may be required due to the existing width of the road in this area which is West Bell Road. The requirement is 18 feet in width and just based on GIS measurements it is a little bit shy of that. Planning staff also realized that there will also be a requirement to construct a cul-de-sac at the end of this roadway as a part of this subdivision. But that is all with the subdivision petition and we are just looking at rezone this evening. Here we have a location map. Again, it is located at 1300 West Bell Road. Here we have the current zoning map. RE1 is the current zoning with Agricultural/Rural Reserve in the western section and then surrounded on the north, east and south side be the RE1 zoning district. The Comprehensive Plan has it designated as Farm and Forest. Here we have the slope map. You will note that there is floodplain designated on this property as well as very steep slopes as you can see here the closer you get to the floodplain and the hydrological feature here. We also have the home site down here toward the south of the property and that will be the homestead site that they intend to parcel off away from the remaining acreage. Alright, so site conditions and infrastructure. The site currently contains a 1,960 square foot single family residence, a 3,520 square foot pole barn and a 936 square foot detached garage all of which will be proposed in that future subdivision into one lot. There is floodplain as I stated before. There are no known karst features and the petition site does exhibit an existing stream that runs all the way north and south through the property. Alright, the MS4 Coordinator has stated that she has no comments regarding the rezone. The property is not located in a critical drainage area and there are no apparent karst concerns. Here we have the letter to the Plan Commission regarding their request to rezone the property as well as the preliminary plat draft what the rezone looks like as well what they intend to with that Sliding Scale to create the 2.5 acre lot down here in the south section of the property. I included a use comparison here in case we wanted to have any conversations about what kinds of new uses the rezone would open up for this property going from

RE1 to Agricultural/Rural Reserve there are significant change in uses. Most of them come in the Agricultural Use category. However, there are a few new additions along the other categories here as well. Alright, finally we have the recommendation. Planning staff recommends approval of the rezone request based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports and I will also state that the Plan Review Committee on August 12<sup>th</sup> did not communicate any concerns with this petition at the time. I will now take any questions.

### **RECOMMENDATION**

Staff recommends **approval** of the Rezone of based on findings of fact and subject to the Monroe County Highway and MS4 Coordinator Reports

### **FINDINGS OF FACT - REZONE**

In preparing and considering proposals to amend the text or maps of this Zoning Ordinance, the Plan Commission and the Board of County Commissioners shall pay reasonable regard to:

#### **(F) The Comprehensive Plan;**

##### **Findings:**

- The Comprehensive Plan designates the petition site as Farm and Forest;
- According to the Comprehensive Plan, Farm and Forest areas should exhibit “A low residential density is necessary in order to protect associated and adjoining Vulnerable Lands and to sustain particular “quality of life” and “lifestyle” opportunities for the long-term in a sparsely populated, scenic setting.”
- The rezone request is to change the zone for the petition site from Estate Residential 1 (RE1) to Agriculture/Rural Reserve (AG/RR);
- The current use of the petition site is a single family residence, which is a permitted use in the RE1 zone;
- If denied or approved, the residential use would continue to be pre-existing nonconforming and could not be expanded.
- If approved the petitioner intends to submit a sliding scale subdivision application to subdivide the property into two (2) parcels, with the residence on a smaller 2.5 acre parcel;

#### **(G) Current conditions and the character of current structures and uses in each district;**

##### **Findings:**

- See Findings under Section A;
- The rezone request is to change the zoning for the entirety of the site to the Agriculture/Rural Reserve (AG/RR) District, which is described by the County’s Zoning Ordinance, Chapter 802, as follows:

**Agriculture/Rural Reserve (AG/RR) District.** The character of the Agriculture/Rural Reserve (AG/RR) District is defined as that which is primarily intended for agriculture uses including, but not limited to, row crop or livestock production, forages, pasture, forestry, single family residential uses associated with agriculture uses and limited, very low density, rural non-farm related single family

uses and not in (major) subdivisions. Its purposes are to encourage the continuation of agriculture uses, along with the associated single family residential uses, to discourage the development of residential subdivisions and non-farm-related nonresidential uses, to protect the environmentally sensitive areas, such as floodplain and steep slopes, and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the AG/RR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the agriculture-related uses. The development of new non-farm residential activities proximate to known mineral resource deposits or extraction operations may be buffered by increased setback distance.

- The petition site is currently zoned Estate Residential 1 (RE1);
- A driveway permit from County Highway may be required for the purposes of the future sliding scale subdivision proposal;
- The majority of the site is greater than 15% slope or designated as floodway (see Slope Map);
- The petition site is located in FEMA Floodplain;
- Access to the site is not affected by the floodplain designation;
- The petition site contains at least 19 acres of land that is designated as Classified Forest;
- There are no known karst areas on the petition site;

**(H) The most desirable use for which the land in each district is adapted;**

**Findings:**

- See Findings under Section A and Section B;
- The surrounding parcels to the north, east, and south are currently zoned RE1;
- The surrounding parcels to the west are currently zoned AG/RR;
- Land uses in the surrounding area are either residential or agricultural;

**(I) The conservation of property values throughout the jurisdiction; and**

**Findings:**

- Property value tends to be subjective;
- The effect of the approval of the rezone on property values is difficult to determine;

**(J) Responsible development and growth.**

**Findings:**

- See Findings under Section A, Section B, and Section C;
- The petition site is one parcel with 134.5 +/- acres;
- The purpose of the rezone is to provide the property owner the opportunity to submit a 2-lot sliding scale subdivision application;
- According to the Monroe County Thoroughfare Plan, W Bell Road is designated as a local road;

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- W Bell Road measures approximately 15 feet in width according to Elevate GIS;
- W Bell Road intersects with N Kinser PIKE, which continues north along I-69 / State Road 37 and continues southeast by crossing over I-69 / State Road 37;
- The petitioner will likely propose to share the existing driveway to provide access to both lots to be created by the sliding scale subdivision;
- The petition site is serviced by a septic system;
- Septic permits from County Health Dept. will be required for the purposes of the future sliding scale subdivision proposal;

#### **QUESTIONS FOR STAFF – REZ-21-4 - Hamilton**

Clements: Are there members of the Plan Commission who have questions for Drew? Ok, if the petitioner or the petitioner's representative is here and would like to address the Plan Commission we have 15 minutes waiting for your use.

Myers: The petitioner's representative is Todd Borgman and it looks like we have a hand raised for a phone number here.

Clements: Ok. So, we could start with Mr. Borgman and then go to the telephone.

Nester Jelen: I think the 812 number needs to press \*9.

Tech Services: \*9 is the raised hand. \*6 is to unmute.

Nester Jelen: Thank you. \*6.

Tech Services: It looks like you are currently unmuted. Do you want to go ahead and try talking?

#### **PETITIONER/PETITIONER'S REPRESENTATIVE – REZ-21-4 - Hamilton**

Hamilton: My name is Jeff Hamilton. I don't know if Todd is on here or not but I am the petitioner and I simply, I want to, the parcel is 135 acres of which my wife and I inherited from my father who my family bought the property in 1976 or 77 and my father lived on the property until 2017 of which he passed away at that point. The people that I would like to sell the property to and that is why I would like to subdivide the 2.8 acres or between 2.5 and 3, I believe is it 2.8, I like that they took very good care of it. They are family. They have 3 children and they are very interested in moving into the property, acquiring the property. I do not have any interest in living in the property. I want to maintain it as classified forest. I do not want to develop it. I will never have it developed. I would like to keep it as in that state which is classified forest. So, that pretty much sums up why I am asking to have the 2.8 acres subdivided so they can take it, maintain it and enjoy it. So, I really don't have anything else to add to that and I don't know if Todd is on here or not so I apologize if he is.

Clements: Thank you very much, Mr. Hamilton. Thank you for sharing your history with us. If there is anyone else that would like to speak on behalf of the petitioner, if you see a hand raised, that is fine. Otherwise we will move to. Let's see is there another, ok, we will move to the public.

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If there are members of the public who would like to speak in support of this petition please raise your hand or press\*9 if you are telephoning in. Ok, I don't think I see anyone. So, we move to the opponents of this petition. If there is a member of the public who would like to speak in opposition to this petition, please raise your hand.

Nester Jelen: I don't see anyone.

Clements: Ok, I would like to bring it back to members of the Plan Commission. Mr. McKim.

**SUPPORTERS – REZ-21-4 – Hamilton: None**

**REMONSTRATORS – REZ-21-4 – Hamilton: None**

**ADDITIONAL QUESTIONS FOR STAFF – REZ-21-4 - Hamilton**

McKim: I am ready to make a motion, so I will pause to see if anybody else would like to make any additional comments.

Clements: Ok, I don't think I see anyone else so if you would like to make the motion that would be great.

**FURTHER QUESTIONS FOR STAFF – REZ-21-4 - Hamilton**

McKim: **In the matter of case REZ-21-4, rezone request from RE1 to AG/RR, Waiver of Final Hearing requested, I move we recommend favorably to the Board of Commissioners of the rezone based on findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports. That does include waiver of final hearing.**

Owens: I will **second** that.

Wilson: I will repeat the motion. The motion is to approve REZ-21-4, Hamilton request to amend the zoning map from RE1 to AG/RR for the property located at 1300 W. Bell Road, including a waiver of final hearing. Again, a yes vote is a vote to send a favorable recommendation to the Board of Commissioners in regard to zoning map amendment based on the findings of facts and subject to the Monroe County Highway and MS4 Coordinator reports and to waive final hearing on this. Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

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Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Wilson: Dee Owens?

Owens: Yes.

Wilson: Jerry Pittsford?

Pittsford: Yes with special thanks to petitioner for giving us further information about his intentions for this property. It makes this one a slam dunk.

Wilson: The motion is approved by a 7 to 0 vote.

**The motion in case REZ-21-4, Hamilton Rezone from RE1 to AG/RR, Waiver of Final Hearing Requested, Preliminary Hearing, in favor is sending a favorable recommendation to the Board of Commissioners, carried unanimously (7-0)**

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**NEW BUSINESS**

**6. 2101-ZOA-01**

**Amendment to the Monroe County Zoning Ordinance:**

**Chapter 807- Signs**

**Chapter 801 – Definitions**

**Preliminary Hearing. Waiver of Final Hearing Requested.**

Amendments to the definitions and sign ordinance proposed.

**Contact:** [lwilson@co.monroe.in.us](mailto:lwilson@co.monroe.in.us)

**BOARD ACTION:** Clements introduced the petition.

**STAFF ACTION:**

Wilson: I don't have the PowerPoint. Anyway, these are text amendments to Chapter 801 – Definitions and Chapter 807 – Signs. As I discussed in prior meetings, this is an effort to basically go through our definitions in our sign ordinance and remove any reference to signage that would require an evaluation of content. This is in result to a Supreme Court case Reed vs the Town of Gilbert as well as several decisions that have been coming down the pike. It is fairly clear that there will be a case before the Supreme Court address the question of whether municipalities can regulate commercial speak or not through their sign ordinance. We are trying to get ahead of the game and basically we are scrubbing the ordinance of any reference to commercial or any reference to having to look at the content of the sign. Accordingly, then we look at the standards of size, height, whether or not there is moving letters, how long it can be erected and those kinds of issues and not to whether or not the frequent message would set forth. It actually will make our ordinance a little bit easier to maintain and to enforce in that we be able to exempt most temporary signs no matter where they are. If you want to have 32 square feet of signage on your property you can do it any time of the year as long as it is temporary and is less than 32 square feet or 8 square feet I guess is what we change that to. There is a provision that under state statute right now that the county cannot, a government unit cannot regulate signage less than 32 square feet in the period prior to the election and immediately thereafter any election. So, in effect we have no ability to enforce any temporary sign ordinance less than 32 square feet during that time period. 32 feet will get an individual at least 3 different yard signs on their property that can be on their yard at any particular time, so there is full opportunity to express your opinion on any issue as long as you place the sign in an appropriate location and it is a temporary sign. We are also eliminating some provisions that were in regard to the location of off-site bill boards that we have had in the past that allows a company if their sign was taken by condemnation they were able to relocate the sign which would keep the county from having to pay for the cost of sign. In checking with Highway there is no project proposed or anticipated in the future that would utilize this provision so we are just going to eliminate it because it will just make our ordinance cleaner and less confusing. If you have any questions I will be glad to answer them. Dave Schilling has spent a lot of time researching these issues as well and can answer questions.

**QUESTIONS FOR STAFF – 2101-ZOA-01 – Amendment to MC Zoning Ordinance**

Clements: Are there members of the Plan Commission who have questions for Mr. Wilson or Mr. Schilling? Mr. Pittsford.

Pittsford: I am trying to find it again because I was scrolling through. There was a reference to

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changeable copy sign versus animated and basically it says that any sign where the message changes more than 8 times a day would be considered an animated sign. Do we have a prohibition against animated, oh it is changeable copy. Here is it. I found it. It says this definition encompasses digital or electronic sign formats. A sign on which the message changes more than 8 times per day shall be considered an animated sign and not a changeable copy sign for the purposes of this ordinance. But when I went back through I couldn't find any reference in the definitions to animated sign and I just wondered if, sorry the dog is barking, just wondered if animated sign is still prohibited and I am going to let the dog out so he will quit barking.

Wilson: Yes. Animated signs are prohibited. It is defined directed above sign changeable copy. Basically the only change we are making to changeable copy is to make it clear that the definition encompasses a digital, electronic format and then we are also removing the provision in regard to time and temperature because in order to tell the time and temperature you have to look at the content of the sign and we think that is likely unconstitutional or could be held to be unconstitutional.

Pittsford: Ok, well you can tell I stopped in my review. So, and obviously in Indiana you have to let change of time and temperature occur because the temperature changes pretty readily.

Clements: Thank you Mr. Pittsford. Are there any other questions or comments from any other members of the Plan Commission? Ok, well, then I think we are ready for a motion. We are getting toward the end here could we have a motion on this and we could close out our evenings work pretty soon?

**SUPPORTERS - 2101-ZOA-01 – Amendment to MC Zoning Ordinance: None**

**REMONSTRATORS - 2101-ZOA-01 – Amendment to MC Zoning Ordinance: None**

McKim: In the matter of 2101-ZOA-01, Amendment to the Monroe County Zoning Ordinance, I move...

Wilson: Let me just jump in here I believe we did not open it up for public comment.

Clements: That's right. Thank you, Mr. Wilson. Are there members of the public who would like to speak in favor of this petition? Please raise your hand or press \*9 if you are calling in by phone.

Nester Jelen: I don't see anyone.

Clements: Is there any member of the public who would like to speak in opposition to this amendment? If so, please your hand or press \*9.

Nester Jelen: I don't see anyone.

Clements: Ok, back to our motion.

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**FURTHER QUESTIONS FOR STAFF –  
2101-ZOA-01 – Amendment to MC Zoning Ordinance**

**McKim: In the matter of 2101-ZOA-01 - Amendment to Monroe County Zoning Ordinance, I move that recommend to the Board of Commissioners approval of Amendments to Chapter 807 – Signs and Chapter 801 – Definitions as published in the agenda with a waiver of final hearing.**

Owens: **Second.**

Wilson: The motion is to send a favorable recommendation in regard to text amendments under 2101-ZOA-01, Amendments to the Monroe County Zoning Ordinance, Chapter 807 – Signs and Chapter 801 – Definitions, along with a waiver of final hearing. Again, this will send a favorable recommendation regard to the ordinance changes to the Monroe County Commissioners. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Wilson: Dee Owens?

Owens: Yes.

Wilson: Jerry Pittsford?

Pittsford: Yes.

Wilson: Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: The motion is approved by a 7 to 0 vote.

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**The motion in case 2101-ZOA-01, Amendment to the Monroe County Zoning Ordinance: Chapter 807- Signs, Chapter 801 – Definitions, Preliminary Hearing, Waiver of Final Hearing Requested, to send a favorable recommendation to the Monroe County Commissioners, carried unanimously (7-0)**

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## REPORTS:

**Planning/Wilson:** The only report is I did speak at the luncheon for the Monroe County Builders Association last Thursday and took questions over issues such as the new zoning ordinance and listened to their many concerns in regard to our current zoning office and took suggestions for improving the department. It was very productive and we are I think going to continue this on a monthly basis and try to address issues with them upfront maybe through a monthly column in their newsletter and so on. We are going to be doing a demonstration with them on how you use the online permitting system. We are going to set that up and also at some point be asking for input in regard to the new ordinance. But it is a fairly wide group of builders and suppliers, so you get a lot of information because they are the ones that deal with trying to build houses and do remodeling. So, it is useful to hear what they have to say.

Clements: Ok, thank you Mr. Wilson. Mr. Schilling, you have any updates or reports?

**Legal/Schilling:** I have no updates tonight.

Clements: Ok, well, that has been really great work. We got a lot done. We did it in a pretty short amount of time considering and I just want to thank you for all of your diligence. Is there a motion to adjourn?

Owens: So moved.

McKim: Second.

Nester Jelen: Larry, do we need, sorry, before we adjourn should we actually continue this meeting to the Admin. Session, since we are having the Admin. Meeting for the Worms Way property?

Wilson: I think we can continue the hearing but it wouldn't hurt just to continue this as well.

Nester Jelen: To October 5<sup>th</sup>.

Owens: That works for me.

Clements: Ok. Well, thank you all.

Wilson: Thanks everyone.

Pittsford: Quick question. Wait. If we continue it do we have to take into consideration any other items on the agenda?

Wilson: We continued the hearing. Is that adequate just to say that we have continued that hearing and we have adjourned the rest of this meeting?

Pittsford: Ok, I just wanted to me clear on that then. The agenda is not open for continuation only the single case that was identified.

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Schilling: Correct.

Clements: That is right.

Pittsford: Thank you.

Clements: Thanks for clarification and thank you everyone for your good work.

**The meeting adjourned at 8:42 pm.**

Sign:

Attest:

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Margaret Clements, President

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Larry J. Wilson, Secretary

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