

**Decatur County Area Plan Commission
May Minutes 2022**

The regular scheduled meeting for the Decatur County Area Plan Commission was called to order by Brad Schutte at 7:00 p.m. on Wednesday, May 4, 2022. There were 6 board member present. Absent was Tom Hunter and Eric Whitaker. Also attending the meeting was Melissa Scholl, APC Attorney, Krista Duvall – Area Plan Director, Debbie Martin – Administrative Assistant and Kevin Fleetwood.

Brad Schutte opened the meeting and read the following: *to comply with Title VI of the Civil Rights Act of 1964, Decatur County requests that participants in this meeting complete a voluntary, anonymous survey that is available on the table in the back of the room.*

* Approval of minutes of the May 4, 2022 were approved as mailed with a motion from Sheila Kirchhoff and a second Paul Stone.

* **APC Petition 2022-12 – Christian Martin**, is requesting to subdivide approx. 7 acres out of 44 acres and rezone approx. 2.99 acres out of 7 acres from an A-1 zoning classification to an A-2 zoning classification for construction of a single family detached dwelling. This request falls under Decatur County Ordinance Section Number 920(7) & 915. The property is owned by Janet Schwering and is located just North of 3141 S CR 180 E, Greensburg in **Marion Township**.

Christian Martin: I'm asking to build a home, house would sit just south of that tree line (referencing the overhead map) with a shop all the way at the south property line. The driveway would come in off of 300 and along the field next to the tree line. **Brad;** so you are staying on top of the hill with the drive? **Christian;** yes, so this is a pretty steep hill (referencing overhead map) and I would be building here, the home there and a garage shop there. The driveway will come in, this is a pretty steep hill. The highway department said that this would be the best place to come in. **Brad;** what are you doing for water? **Christian;** rural water. I talked with Roger Kramer and there is water available off of 180 E. **Christian;** I think it will actually be closer to 6.25 acres, we rounded up to 7 acres to be safe. There would be maybe ¼ acre of farm ground that would be taken for the driveway. **Brad;** it is rough ground.

Paul Stone made a motion to vote on APC 2022-12; Tom Cherry seconded the motion with all 6 members present voting yes. **Brad;** your petition passes, good luck.

* **APC Petition 2022 - Eric & Pamela Sample** is requesting to rezone approx. 2.99 acres out of 6.725 acres from an A-1 zoning classification to an A-2 zoning classification for construction of a single family detached dwelling. This request falls under Decatur County Ordinance Section Number 920(7) & 915. The property is owned by the petitioners and is located at 1960 N Ironmine Road, Westport in **Sand Creek Township**.

Eric Sample: my wife and I want to build a home off of Ironmine Road, we have a pole barn there now, we have the driveway in, we are on rural water, we have good drainage there away from the house. The field in the back will be put into the filter strip program for wildlife. The

septic has been layed out. **Brad;** I think everything is pretty close to rock there, isn't it? **Eric;** I hope not. **Brad;** your elevation should be alright. **Eric;** our basement will not be very deep because we are in a saddle there. We will build up the foundation.

Sheila Kirchoff made a motion to vote on APC 2022-13; Todd Mauer seconded the motion with all 6 members voting yes. **Brad;** your petition has been approved, good luck.

* **Bill Finley** – Ordinance Discussion

Bill Finley: I'm just here to try to make sure that everything has been tried before we do the rezoning of Callahan's property.

- 1) Is there any conditions that you can put on an A2 zoning that would allow them to do what they want without opening it up to everybody?
- 2) I don't understand why directly to a B2 instead of B1.
- 3) How can we put conditions on a B2 zoning, is there any conditions or commitments to be put on the B2 zoning.

Board; the current ordinances spell out all of the parameters of the above concerns. It takes a lot of time to change the ordinances, it does not happen overnight. There are state laws that come into play as well. There was some additional discussion on how long we have had the current ordinances and what it takes to change ordinances.

Bill; I want to give you an example and I want it on record; if you take an area like this and zone it B2, there is no businesses out there. B2 opens a wide window. I don't know if you have looked at the blueprints but, this building and the design and the location is perfect for a marijuana dispensary. The only thing is, Indiana right now, threw out the legislation. We don't know if it is going to be in an incorporated area or not. Most of the other states are not. Incorporated areas do not want them, there are too many churches and schools. (speaking to Tim Callahan) If it comes down to this and you get one of these big companies from Oklahoma, South Carolina, and they walk in here and offer you two million dollars, you are not going to think twice about it and you have the B2 zoning. **Brad;** I appreciate you putting that on record but that is hearsay, we can make assumptions on a lot of things. **Bill;** this is my biggest fear because this thing is coming to Indiana. **Brad;** thank you Bill.

Attorney Larry Whitham with Witham & Zubek, LLP Law Office in Indianapolis: Bill has retained my services and I would like to ask a couple of questions. One question I have, my understanding before it came to the meeting in the petition that we are talking about, with Hillbilly Corner, is going to be tabled this evening, I don't know if that is official or not. I had a presentation but I don't think it is relevant if the petition is not going to be heard. Before we address that issue, maybe I can ask another question, does your ordinance not permit, the Board of Zoning Appeals to grant variances? **Brad;** that is the Board of Zoning Appeals. **Mr. Whitham;** I understand, but it does allow, right? **Brad;** yes. **Mr. Whitham;** I assumed it did, I'm not familiar with your ordinance. The primary one I practice with is in Indianapolis. In metropolitan plan commissions, such as we have in Indianapolis, you can grant a rezoning with written commitments, if recorded and (inaudible) apparently you don't have that here. **Brad;** no. **Mr. Whitham;** just like Indianapolis, the Board of Zoning Appeals (BZA) can grant a variance,

so that is at least one option that maybe needs to be reconsidered. They went in, this use went to the BZA and actually has approval, in hand, for a continuation of the operation that they have had out there for over five years. They got that back in late 2021. But then it became apparent that they didn't want a continuation of the old, they were increasing their business to include a lot of other off-site product, to retail, such as cheese and meat and hand dipped ice cream, etc. which was going to increase the intensity. So I think somewhere along the line they were told that they can't do all of that on a conditional use, however they could do all of that on a variance, if they went to the board and said, what we are proposing doesn't really fit neatly within the A1/A2 zoning district, here is what we want to do, then the BZA can, and if your statute is like most of the statutes in the state of Indiana, can grant that variance with conditions, and say yes, you can do A, B, C, you cannot do D and E, you've got to have hours of operation, we don't want you to operating until 11 o'clock at night disturbing your neighbors, you can put screening conditions in there, if they need to have trees or a fence to avoid headlights to avoid going into the neighbors across the street, if this rezoning effort were simply stalled out at this point and time and they were sent back to the BZA to seek a variance, you don't have to change the zoning on the property. It can be a use that would be permitted in the B2 but it is a very specified use. Just what they are talking about, it can even include that this variance is not going to be sold to anyone else, it is subject to these people and these people along, Mr. Callahan and Robin. That is the reason I ask. That is a place where the parties can compromise and not put this body in a position, either grant them a B2, because they have built the building, they intended to use for B2 uses, but then open it up to all other kinds of potential uses, and there is a myriad of them. I don't know how you can grant them a B2 and believe or say that someone else may come along, whether it's a business that offers them a lot of money and they have a monopoly because I don't think there is another B2 anywhere close to that. My thought is that maybe this ought to be tabled, I don't know if that is the intention, but if it isn't I will come back and oppose it. I think that a variance would be the best place to solve this problem. **Brad;** thank you. To make some quick light of that, I think the main reason for that was the commercial structure, and that is what held us up on an A2 with a commercial structure. Thank you for that input, I do appreciate that.

* **Robin Carmer 2022-7** - Returned by Commissioners

Robin Carmer: we are wanting to table this, we hired an attorney, (passed out copies of a letter). We are just asking for it to be tabled for 30 days. **Brad;** we will put this into record (the letter is in the file). We will table this until the next monthly meeting.

With no other business before the board Todd Mauer made a motion to adjourn; Sheila Kirchoff seconded the motion, the meeting adjourned at 7:29 p.m.

ATTEST

Secretary, Todd Mauer
Decatur County Area Plan Commission

President, Brad Schutte
Decatur County Area Plan Commission