

The Madison County Plan Commission on the above date at 9:00 A.M. with Bill Maxwell, President, presiding.

Members Present: Bill Maxwell, Paul Wilson, John Randall, Jr., Larry Crenshaw, John Orick, Brad Newman, Mark Gary and Wesley Likens.

Members Absent: John Simmermon.

Also Present: Cory Wilson, Executive Director. Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

President Maxwell introduced Larry Crenshaw as the new member appointed by the County Council to serve on the board replacing Gary Gustin.

### **Current Business**

1. Roll call was taken with John Simmermon absent.
2. The minutes of the preceding meeting were distributed to each member prior to the meeting. Member Newman made a motion to approve the minutes as corrected. Member Orick seconded the motion. The vote was unanimous in favor of the motion.

### **New Business**

1. Petition: #573  
Address: West side of State 13, approx. ½ mile south of Co. Rd 800S  
Location: Green Township  
Petitioner: GEWD Properties, LLC  
Request: Rezone 14.00 acres, more or less, from AG (agriculture) to GC (general commercial) classification

Director Wilson stated that staff recommends approval of the zoning request, subject to the following conditions:

The stub street from the north shall be connected and extended through the subject site to provide for future connection to the south. In the event that a connection to this stub is not feasible, the petitioner will have to substantiate the reasons why.

No fast-food restaurants with drive-thru facilities shall be permitted.

Loading docks shall be oriented towards the southwest corner of the subject site.

If a multi-tenant commercial strip center is proposed, the structure shall be designed in a manner that would provide depth and architectural character to the structure.

The following issues were considered in formulating the recommendation:

The subject site is an approximately 14-acre parcel located along the west side of State Road 13, two parcels south of the entrance to the Summerlake planned-unit development. This request would rezone the parcel from

Agriculture (AG) to the General Commercial (GC) district, to provide for commercial uses. The Comprehensive Plan recommends mixed-use development for the area along State Road 13, south of I-69 to CR 900 South. To the north of this site is a mini-storage facility, to the south is vacant/undeveloped farm land, to the west is the Summerlake subdivision, and to the east is vacant/undeveloped farm land.

According to the petitioner there is no specific user identified at this time, though the “rumor mill” indicates that some sort of grocer may be interested in the property. If a grocer or any other user that may require loading docks were to locate on site, the staff would require the developer to orient those docks towards the southwestern portion of the property. This would help to limit potential disruptions to those residents that live immediately west in Summerlake. Further, staff would suggest that no fast-food restaurants containing drive-thru facilities be permitted on site. Fast-food restaurants tend to remain open for 24hours, or maintain hours that keep them open very late into the night. There is potential for headlights shinning into neighboring windows as well as the sound from the speakers being heard. This directly affects the potential resale of those properties and could potentially lower property values.

To the north of this site is a mini-storage facility. That property was developed in 2007 and provides access to this site with a cross-access easement. In order to ensure that State Road 13 continues to function as a highway and to limit the number of curb-cuts (which could lead to traffic signals), the staff would recommend that the Plan Commission require the developer to connect to this stub and develop a frontage road along the eastern property line with further access to the south. Staff has discussed this with the petitioner and suggested that the frontage road incorporate angled or parallel parking that would provide additional parking for the development.

Staff is concerned that if a retail strip center were developed on the site, the potential for a flat, uninspiring design would be constructed. Therefore, staff has recommended that a multi-tenant project be designed in a manner to provide depth and character with shared facilities such as parking. Additionally, sidewalks shall be constructed and every effort shall be made to provide for a direct connection to the Summerlake subdivision. Any opportunity to get residents to walk as opposed to driving would limit traffic, build safer neighborhoods, and increase the areas quality of life.

**GENERAL INFORMATION**

EXISTING LAND USE            AG            Agriculture / Undeveloped

**SURROUNDING ZONING AND LAND USE**

North -	GC	General Commercial / Mini-storage
South -	PUD	Agriculture / Undeveloped
East -	PUD	Agriculture / Undeveloped
West -	PUD	Single-family Residential

COMPREHENSIVE PLAN            Recommends mixed-use development for this site.

**THOROUGHFARE PLAN            The Official Thoroughfare Plan indicates that State Road 13 is a primary arterial.**

**ZONING HISTORY**

Summerbrook Planned-Unit Development (to the north and west)  
Rafert Farms Planned-Unit Development (to the south and east).

End of report.

Petitioner's comments:

Dick Donnelly, 1615 Broadway, Anderson.

Mr. Donnelly informed the board that Ed Galloway, Jeff Swackhammer, and Steve Servies were also here to speak on this request if needed.

Mr. Donnelly stated that regardless if the zoning was changed or not, they would still maintain the Corridor Overlay Design Standards. Since this is on St. Rd. 13, the State Highway maintains the jurisdiction for curb cuts.

At the present time Mr. Galloway has no assured buyers. The area is growing and commercial development is moving in. The best use of the land will be for commercial and not agricultural uses.

We understand this is the first in a line of hearings and there will be several more before the process is completed. This is just the first step in a long process.

Mr. Donnelly was asked if the developer had any problems agreeing with the written standards that the director alluded to in his staff report and if there would be any problems agreeing with those standards.

Mr. Donnelly told the board they would maintain a cross access easement. It will depend on what will go in and what the board would require. We will be open to their suggestions.

There was a discussion concerning fast food restaurant with drive-thru facilities. The developer asked if that would be addressed at a later time.

There was discussion concerning the MCPC's ability to limit uses.

Director Wilson stated that the rezoning stage is the only time that the MCPC has the ability to limit uses.

Also discussed was the noise, hours of operation and lighting that would be associated with fast food restaurant with drive-thru facilities.

Mr. Donnelly asked if they agreed to the commitments restricting fast food drive-thru, if it would be possible to amend those commitments, if need be.

With the loading docks we will be very sensitive with and follow the guidelines in the Zoning Ordinance. We will also work with the architecture of the structures as suggested.

A brief discussion was held on sidewalks.

Mr. Donnelly stated they would agree to reduce items one through four and have the commitments signed before it is presented to the County Commissioners.

Greg Valentine from Fall Creek Regional Waste district was present

Mr. Valentine stated they have met with the petitioner and they will have sewer availability.

Allen Holmes was present and told the board he owns the property directly across from the subject site. Mr. Holmes wanted to know what was going to happen to the old dilapidated house to the north and stated it needed to be torn down.

Mr. Holmes was informed he needed to talk to staff after the hearing.

Jerry Longenhorn was present representing the church to the north of this property. The church is concerned with the sidewalks. If this is developed would the church be required to put the sidewalks in or do they share it with someone? The church is concerned with the expense of this.

Mr. Longenhorn was informed that they would have to put the their own sidewalks in but even if this is approved it could be years before it is developed.

No remonstrators were present.

Member Wilson made a motion to approve Petition #573, a request to rezone approximately 14 acres from the agricultural district to the general commercial classification, as it is the highest and best use for that property. Additionally the commitments made by the petitioner would be presented to the Board of Commissioners for their consideration. Also this is recommended for approval per the staff report and the Findings of Fact as presented.

Member Newman seconded the motion.

The vote was unanimous in favor of the motion. Petition #573 will be forwarded to the County Commissioners with a favorable recommendation for approval.

Mr. Shine informed the Board the Planning Director prior to the submission to the County Commissioners would approve the commitments.

Miscellaneous: Discuss New Commission Member - The County Council appointed Larry Crenshaw to the board replacing Gary Gustin.

Legal Nonconforming Use – Properties/Structures - Director Wilson told the board they should have a copy of Legal Nonconforming Use in their packets. Due to the ordinance change in 2002 a lot of the properties were blanket zoned to match the new zoning classifications. Staff has received several calls where people had gone through the process of rezoning their property to business, industrial, or commercial and now because of the blanket zoning they have different zoning. Now some want to sell their property and cannot get the added benefit of commercial and/or business zoning.

Staff feels this is a disservice to those who paid to rezone and question the reasoning of making them go through that process again. Are there any suggestions of how to handle these situations?

Director Wilson stated the letter he distributed was for this specific user. This is just for him to know that he can continue to operate his business but if this changes hands the legal non-conforming use goes away. If someone would buy they land they would have to come before this board and go through the outline in the ordinance. Other cases of this type would be addressed in a case-by-case basis.

Mr. Shine stated this is where our new commitment form may need to come in to affect. We will try and have some clarification for you by the next meeting on the difference between a commitment and a condition.

Director Wilson informed the board he had drafted a commitment form. The commitments would be added to the form, signed and notarized by the petitioner. When the petitions are forwarded to the County Commissioners, those commitments would be incorporated into the staff reports. All the information will be included in the staff packet. These commitments and/or conditions would be recorded

Bonnell Settlement - Mr. Shine stated we have two pieces of litigations and I have asked for an Executive Session upon the completion of this meeting to discuss the Ayers and Bonnell issues. We had a violation in June of 2006 and we filed a case in Superior Court Division II against Lyle and Joan Bonnell. Their property is located south of Anderson. There was a bunch of debris and junk. A manufactured home had been brought in and had never been properly permitted or installed. We had just been advised that Mr. Bonnell recently passed away. Mrs. Bonnell lives out of state. Several orders were issued for her to clean the property, which she had done. The court then fined her \$100 a day. The fines added up to \$11,000 on the property. After Judge Brinkman and I worked with her she has now brought the property in to compliance. The fine of \$11,000 is still of record. We have an attorney now that has filed to have the fines set aside for her. They have agreed to pay the county \$1,200. I am presenting to the county that we accept this compromise and settle this. The property is clean and will be up for sale.

Member Newman made a motion, seconded by Member Orick accept the settlement of **\$1.950** in regards to the Bonnell matter. The vote was unanimous in favor of the motion.

Ayers vs. MCPC, et al - Mr. Shine stated this would be brought up at today's Executive Session, which is at 1:30 P.M. today. This was advertised in Saturday's paper and has been posted since last Friday.

Administrative Plat Exception - Director Wilson informed the board he had spoken with a person who lives on a corner lot on 40 acres with an existing house. The house was constructed in early 1975 .He wants the ability to separate the house and still continue to farm. However, he wanted the ability to sell that, still live at the house, and have the property farmed. That requires him to go through the Administrative Plat process. There will be a number of expenses that would still occur. After thinking about this, I thought we could do an Amendment to our Subdivision Control Ordinance and the code in regards to plats. Is this something the Plan Commission would consider that, if you had one split where you separated out a house built before November 10, 1975 and left the remainder so long as you met all the zoning requirement and standards of those lot and you didn't have to provide for any right of way dedications, the commission would allow them to go through the Administrative Plat process. Would the Plan Commission consider about thinking about allowing exceptions where you can do one split so long as you met the ordinances? This way it could be handled

administratively as opposed to going through the whole process. We are talking existing structures and no new construction. In order to build they would have to go through the Administrative Plat process. I would just like the board to think about this and get back with me and we can make an amendment to the ordinance.

Member Randall stated he would move that we request Cory to draft up a proposed amendment to the ordinance so the board may have time to look it over and have some discussion before it's advertised.

Member Orick seconded the motion.

The vote was unanimous in favor of the motion.

Director Wilson stated back in February the County Commissioners, Surveyor, and I all met in regards to the property located at the northwest corner of 800S and St. Rd. 13. The Planning Department issued a Stop Work Order. We believe the property is still under the jurisdiction of the Planning Department. Therefore, they have to obtain any permits from the Planning Department so therefore we issued the Stop Work Order. A Stop Work Order was also issued by the Surveyors Office on behalf of the Drainage Board.

Mr. Shine stated the Stop Work Order is still in effect and we are of the opinion that property is in the jurisdiction of Madison County and is not in the jurisdiction of Ingalls. A lawsuit has been filed by Madison County through the County Attorney against Ingalls. There has been a finding in that based on the annexation by Ingalls that Ingalls has in fact annexed this property. We do not feel that it is contiguous. That is going to be appealed by our county attorney. He has not at this point in time filed that appeal.

The board was informed that once the Drainage Board issues an approval for this site they would proceed with what they are now doing on the property. They have not stopped building because of the Stop Work Order issued by the Plan Commission because they feel they are under the jurisdiction of Ingalls. The step is a result of the Drainage Board Stop Work Order.

The board was informed there would be an Executive Session, Monday at 1:30 P.M.

Member Orick made a motion, seconded by Member Newman to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 10:46:38 A.M.

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Bill Maxwell, President

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Beverly Guignet, Secretary

