



ZIONSVILLE PLAN COMMISSION

MEETING NOTICE AND AGENDA

Tuesday, February 18, 2025

6:30 PM (Local Time)

**THIS PUBLIC MEETING WAS CONDUCTED ONSITE AT THE
ZIONSVILLE TOWN HALL, 1100 WEST OAK STREET, ROOM 105 (COUNCIL CHAMBERS)
AND ELECTRONICALLY VIA ZOOM.**

The following items are scheduled for consideration:

- I. Pledge of Allegiance
- II. Attendance: Dave Franz, Josh Fedor, Brad Johnson, and Nick Plopper attended in person. Andrew Kossack attended virtually.
- III. Planning & Building Department [January Monthly Report](#) (Informational Only – no action required)
- IV. Approval of the January 21, 2025 Plan Commission Minutes: Approved
- V. Continuance or Withdrawal Requests

Docket Number & Link	Petitioner / Project Name	Address of Project	Petitions
			None

VI. Continued Business to be heard

Docket Number & Link	Petitioner / Project Name	Address of Project	Petitions
2024-81-DP: Staff Report with Exhibits Letters of Interest	Skiage Enterprises, Inc. / Cottages at Zionsville - Memory Care	6863 W. Stonegate Drive Zionsville, IN	Petition was continued from the January 21, 2025, Plan Commission Meeting. Development Plan for a 13-bed, 7,274± square foot, single-story memory care facility being zoned Rural Professional Business (PB). After presentation and discussion, the Commissioners continued this request to the March 17, 2025, Regular Meeting. 5 in Favor 0 Opposed

VII. New Business to be heard

Docket Number & Links	Petitioner/ Project Name	Address of Project	Petitions
2024-77-MP: Staff Report with Exhibits	Allen Chan / Chan Minor Residential Subdivision	430 N. 1200 East Sheridan IN	Primary Plat approval of a 2-lot minor residential subdivision on 8.76 acres in the AG zoning district. Deferral of sidewalk installation requested. Deferral of sidewalk installation and waiver of Bond approved. 5 in Favor 0 Opposed Primary Plat Conditionally Approved as presented. 5 in Favor 0 Opposed

VIII. Other Matters to be considered

Docket Number & Links	Petitioner/ Project Name	Address of Project	Item to be Considered
Zoning Ordinance Updates Development Plan Review Update	Town of Zionsville		Discussion of proposed Zoning Ordinance Text Amendments Commissioners discussed updates to the Development Plan Review process. Discussion on other ordinance updates was continued to the March meeting.
			Plan Commission Training – Dan Taylor

Please note that a quorum of the Zionsville Town Council may be in attendance at the meeting.

Respectfully Submitted: Mike Dale, AICP
Director - Planning and Building Department
Town of Zionsville

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In Attendance: David Franz, Josh Fedor, Brad Johnson, Nick Plopper
Virtual: Andrew Kossack
Absent: Jim Hurst, Kendrick Davis

Staff attending: Mike Dale, Roger Kilmer, Jodi Dickey, Dan Taylor, Attorney

Franz Call to order the Plan Commission meeting of February 18, 2025. Please rise, start with the Pledge of Allegiance.

All Pledge of Allegiance.

Franz Mike, would you please take roll?

Dale Yes sir. David Franz?

Franz Present.

Dale Andrew Kossack?

Kossack Present online.

Dale Nick Plopper?

Plopper Present.

Dale Josh Fedor?

Fedor Present.

Dale Kendrick Davis?
[No response]

Absent.

Jim Hurst?
[No response]

Absent.

Dale Brad Johnson?

Johnson Present.

Franz All right so we have five people here. We have a quorum but any matter will need four votes to pass. If not, they will be automatically continued to next month. In your packet was a set of minutes from the January meeting. Is there any comments, additions, deletions on those minutes? Is there a motion to approve?

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Johnson All 69 pages or something?

Franz I, I already sent in the thing. I can't help with the, the miss, missteps but –

Johnson I went through those. There were a few places where I think the microphones must've cut out –

Franz Yeah.

Johnson Is that what we just adopt it as such?

Franz Yeah.

Johnson Okay.

Franz If you remember you can send it in and tell them what you think it is but it's –

Johnson I was taking notes myself but not that detailed.

Franz Okay. All right, so do we have a motion to approve?

Fedor So moved.

Franz Is there a second?

Johnson Second.

Franz Can we do, we have to do –

Taylor Roll call.

Franz Roll call on this because we have a remote commissioner.

Dale David Franz?

Franz Aye.

Dale Brad Johnson?

Johnson Aye.

Dale Andrew Kossack?

Kossack Aye.

Dale Nick Plopper?

Plopper Aye.

Dale And, who am I missing here?

Franz Josh.

Dale Okay, Josh?

Fedor Aye.

Franz Minutes passed and approved.

On to Continued Business – Docket Number 2024-81-DP, Skiage Enterprises, Inc./Cottages at Zionsville Memory Care, 6863 Wet Stonegate Drive, Zionsville. A Development Plan for a 13-bed, 7,274± square foot single-story memory care unit facility being zoned Rural Professional Business (PB). Roger –

Kilmer Thank you. If we could promote my screen please. Thank you. As mentioned, this is a request for Development Plan approval for a 13-bed, almost 7,300 square foot, single-story memory care facility located in Stonegate. On the screen in front of you is the location map with the site identified. For orientation purposes, north is up and running in east-west is East Whitestown Parkway also known as Oak Street. Then as you come into Stonegate on West Stonegate Drive, there is an access easement, excuse me, branching off to the, going eastward from Stonegate Drive which provides frontage for the subject site. This site is surrounded, bordered on the east by a property that has been recently approved for the Atwater Self-Storage facility, yet to begin construction. To the west of the site is an orthodontics professional building, common area which is a retention pond that provides drainage area not only for this site but other sites with this, within Stonegate and then another professional building to the southwest of the subject site. Directly south of the subject site is an undeveloped lot. All of this is recorded within the plat of Stonegate.

The property is zoned Rural Professional Business. Immediately to the east, again, the, the location where the Atwater Self-Storage is to be constructed, that is zoned GB but then all of the surrounding properties around it are, are zoned PB, Professional Business.

The Development Plan is for a 13-bed, 7,274± square foot, single-story memory care facility. The facility would also include an office conference space, kitchen and dining area and services for the residents such as a salon and activity area. The project would be accessed via the one-way, via a one-way drive coming off of, drive through the parking area entering from and exiting onto the ingress-egress easement. The single-story design incorporates dormers into the roof area to provide some architectural interest. The primary exterior building material is white face brick with windows having black trim. Wall-mounted lighting is provided for architectural accents as well as a copper roof over a bay window on the front façade located at this point. Primary roofing material would be black architectural shingles.

There are three topics of interest for this project. Detailed signage drawings have not been submitted as a part of review of this Development Plan. An area for wall signage is depicted on the south building elevation. It would be located in this area but all future signage for this project is not a part of this Development Plan approval request and will be required to file for individual sign permits. If any of

the signs do not comply with any of the applicable development standards, variances would need to be secured from the Board of Zoning Appeals.

The second item of interest is lighting. A single pole-mounted light with a height of 22 feet, 22-1/2 feet is located near the parking area. It would be located right in this area and to be consistent with neighboring developed sites, staff recommends that the single pole-mounted light on the subject site have a height of 15 feet. Again, what is, what was proposed on the photometric plan was 22-1/2, we're suggesting to be consistent with the surrounding lighting, a maximum height of 15 feet.

The third item of interest involves parking. The required vehicle parking for this use is one parking space for every four residents. The standard includes parking for staff of the facility. As the facility proposes 13 beds for residents, the required parking would be four spaces. The site layout depicts a total of four parking spaces with one being designated as ADA accessible. The Plan Commission may want to discuss the adequacy of the parking amount with the petitioner.

As for staff recommendation, we do support approval of the submitted Development Plan noting the following: Final signage plans be submitted for review and approval by staff and the pole-mounted lighting to have a maximum height of 15 feet. I'll be glad to answer any questions you might have.

Franz All right, thank you Roger. Is the petitioner present? Do you have anything to add to that, any, anything you want to say? State your name, address please.

Tharp My name is Drew Tharp. I'm with Gutwein Law at 300 North Meridian in Indianapolis. I don't have a whole lot to add. Roger did a great job summarizing that and I want to thank him and his colleagues for helping us get to this point. We're excited about this site. We think it's got great potential and, and serves what will be a growing need in, in the coming years. As, as Roger noted, we believe we have sufficient parking. In our operator's experience with a facility of this size, we expect to receive only two to three visitors per day in addition to the two staff who will always be onsite each shift so we're, we're excited to move forward.

Franz All right, thank you. Is there anybody in the public who would like to comment on this matter? All right, I'll take that as a no. At this point, I'll open it up to the members of the Plan Commission.

Fedor Roger, this might be for you – would, would the 15-foot light put off enough light, I mean a 22-foot tall puts off more radiant light but would two lights be better than one? Or two pole lights?

Kilmer Good question. I, while I'm not a lighting engineer, the area that is to be illuminated by the single light, first of all it's located right, right in the center of the area to be illuminated. Looking at the other developments in the area, I believe that one light would be sufficient and there are ways to shield that and direct the light in, into the, into the parking spaces if needed but from a, just an appearance standpoint, that is one of the main reasons why staff is recommending the 15-feet as opposed to the 22-1/2.

- Fedor Thank you.
- Johnson I heard you say that you believe that the parking is sufficient for your expected use. We have other memory care operations in the Town of Zionsville, one that has a cap at 36 beds, we believe, and they have 29 spaces so the ratio there is quite different. I think Roger just read into the record that you are gonna possibly have a salon there which would mean a third employee that would be there at certain times of the day?
- Tharp Potentially, I suppose.
- Johnson And that you may have one or two visitors per day, deliveries?
- Tharp Yeah, we'll have deliveries in and out as needed.
- Johnson I mean it seems to me that the parking is light for what your use is, especially if you are gonna have a salon, you are gonna have a kitchen. So are your two staff always preparing those meals or are there people that come in and prepare meals?
- Tharp I believe it'll be kind of some of both. There will probably be deliveries for the kitchen, one staff caring for patients, one staff preparing meals. Probably a rotating crew.
- Johnson So, theoretically, you could have three people working there at any given time and then there's no space for visitors?
- Tharp It's possible.
- Johnson Okay. What about expansion of the use or future use? Does the building allow for you to add more beds? We don't, I don't have a floorplan to look at.
- Tharp No, I have one if you'd like to see it but as, as designed, no, the only way to, to add additional beds would be to build up and, obviously, with a use like this that's not ideal.
- Johnson Is there any assurances – we, we got a letter from a person of, of interest that probably should be read into the record if it's not already officially in the record but concern that the neighboring parking lot will be used for that overflow.
- Tharp We actually have an understanding in place with the owner of the neighboring property to have access to his parking lot as needed for overflow parking in the rare instances where it may be needed.
- Johnson Is that the orthodontics office?
- Tharp Yes.
- Johnson Okay. Is that, is there any kind of commitment that can be made to assure that we're not going to see on-street parking or excessive parking? Is there any kind of verbal or written commitment that can be provided to us?

- Tharp We could do that.
- Franz How many, I'm, I'm looking at the map here and north of it is the lake or pond whatever you want to call it so you've got essentially 15 feet to the lot line, you've got a 5 foot for landscape and then 10-foot setback. How many feet do they need to get, I'm sorry, I mean not parallel parking but horizontal parking? I mean do you need another 5 feet? How many feet would they need, Roger? I'm just kinda curious. Is that hard to state? I mean they'd have to go and get a variance from the BZA – I'm just asking – if they got a variance to, to move the lot line for that 10-foot setback and they were able to utilize that, would that 10 feet be enough so they could have eight spaces horizontally? I'm just curious if –
- Dale Park, parking stalls are generally they're like 10 x 20 or 9 x 18.
- Franz Okay. I mean I don't even know how, if it would be even possible to do anything along that line but I think what we were talking about, this is the rural guidance or ordinance for this so our thoughts were that when they're talking rural it's, something's going out there on a, a decent sized plot of land where parking is not going to be limited to four lane or four spots. I mean this is where we're trying to put as much living space, if you will, in the property and then parking is kinda the, almost an afterthought it looks like. It just seems, I think there's going to be more than four people out there not just occasionally. I think it's gonna be on a regular basis.
- Johnson I do too.
- Franz I don't know what can be done but –
- Plopper Are there regular visiting hours for the operator who intends to run this facility? Is it after, is it after the hours of the orthodontist or typically or do you care to comment on that?
- Tharp I don't know. We have not established set visiting hours yet. If that becomes an issue I'm, I'm sure that's something we can plan for. I imagine there will be regular visiting hours and that visitors will not be free to, to come and go at, at all hours of the day and night but I don't know what those are yet.
- Fedor This overflow parking that you're discussing, is it gonna be accessed by the sidewalk only or is there gonna be a cut so that if you park all, if you're the second handicapped person in the area, I'd park all the way halfway down the building then make it all the way down the sidewalk to get to this facility.
- Tharp I'm, I'm sorry, I'm not sure I'm following your –
- Fedor The second, the overflow parking that you're discussing on the north end there's a single handicapped parking spot –
- Tharp Ahh, I see. Okay.
- Fedor How would that access point, how would they get to the building?

- Tharp Umm, we would work out an easement sidewalk to our building there and, and down to our parking lot and around to the front door.
- Fedor They wouldn't have to go all the way down to the street –
- Tharp Correct.
- Fedor Comes across. Okay.
- Tharp Correct.
- Franz Is, is your agreement with the adjacent property owners is that in writing or is that verbal?
- Tharp Yes.
- Taylor Does that agreement have a term or does it run with the land?
- Tharp It runs with the land.
- Dale Would that agreement be recorded?
- Tharp It can if it needs to be.
- Dale Okay.
- Fedor I think I'd feel more comfortable if it was recorded so.
- Franz Is there anybody else with questions?
- Johnson I've been just looking through the Comprehensive Plan and there's, there's a lot of it, 405 pages of the plan that's being revised is, is currently being revised but a lot of language specific to sustainable quality. I don't see anything about parking, not to say that there isn't, I just have not been able to find that. For me, I'm concerned about the future viability meaning that what if things change a bit in 10 years from now, 20 years from now. This use is still there it's, it's needed even more, there's just no room to expand. The site to the east is gonna be developed so that's gonna be landlocked. We've got the pond to the north, orthodontics to the west, street to the south. There just isn't much room to adapt and certainly if the use were to cease operations at some point, again, 20, 30 years into the future, for any office, medical, dental, retail, service business, you name it, the, the bare minimum number of parking spaces for that building to ever be adaptively reused would be 26. That's the bare minimum that the ordinance would allow and so –
- Tharp Yeah.
- Johnson To me we've gotta, you're creating a building that can never, without significant variances and probably a lot of pushback, would not ever be able to be adaptive, adaptively be reused for something else.

- Tharp That's a fair point. The flipside of that is to fit 26 parking spots on that parcel would essentially leave it unusable for any, any sort of building.
- Johnson The 26 is based on the ratio of square feet so if it were a 6,000 square foot building, that number would be quite a bit less, 5,000 even less, 4,000 less –
- Tharp Sure –
- Johnson So –
- Tharp But, but given the layout of the site and the fact that the, the 30-foot easement running down the, the east portion of the site is unbuildable, just the, the layout of any parking spaces that require more than four spaces leaves you with very little buildable area on this parcel altogether.
- Franz So there's 10 rooms, seven singles and three doubles?
- Tharp No, no, I actually need to, to make a correction here. There are 12 rooms, 10 of them are single suites, two of them are couples' suites so there's actually a potential for up to 14 patients, not 13 as, as Roger earlier said.
- Johnson Is it possible for the singles to ever be used as doubles? Are they the same design, roughly the same size or –
- Tharp The couples' suites are slightly larger. I suppose it's possible if you had a couple that was willing to, to take that space but –
- Franz You're thinking husband/wife type –
- Tharp Right.
- Franz Situation?
- Tharp Right.
- Franz Or significant other –
- Tharp Sure.
- Franz To be correct.
- Dale Based on the parking ratio, the maximum number of beds I guess would be 16.
- Tharp Right, right. We don't have a ton of room to grow.
- Franz Anything else? Is there a motion? We need, if, if we, the motion if it's for approval needs to reference the commitment on the parking on the street and then also the recordation of the letter between parties on parking.

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Johnson I would make a motion to deny based on Findings of Fact not being consistent with the Comprehensive Plan.

Franz We have a motion to deny. Is there a second?

Fedor Second.

Franz All right, so is there any further discussion? All right, so a yay is to deny and nay is not to deny but not approve, not deny. So would you take roll?

Dale Sure. Brad Johnson?

Johnson Aye.

Dale Josh Fedor?

Fedor Aye.

Dale David Franz?

Franz Nay.

Dale Andrew Kossack?

Kossack Aye.

Dale Was that a nay?

Kossack Aye, I'm sorry. Yes.

Dale A yes. And Nick Plopper?

Plopper Nay.

Franz All right, so that failed. Is there another motion on this matter?

Plopper I'm gonna make a motion to continue this to the March 17, 2025 Plan Commission meeting to correct any deficiencies and with that I would encourage petitioner to be able to present to us on specifics of the understanding with the neighboring property. I think in a situation like this a, I would, and I don't have any authority over this, but I would encourage a parking easement, shared parking arrangement with the orthodontist owners and be able to give us further assurances that there's adequate parking in the general area.

Franz What, what was gonna, what had appeared to me was going to happen if we would've gotten a motion to approve, it wasn't gonna get four votes so this was gonna be automatically continued. So we could go through that process and automatically continue it or we can take the motion to continue. So right now we have a motion to continue this to the March, what is it?

Fedor 17th.

Franz March 17th meeting.

Fedor Uhh, I'll second the motion.

Franz All right. Any further discussion? Mike, could you please take roll?

Dale David Franz?

Franz Aye.

Dale Andrew Kossack?

Kossack Aye.

Dale Brad Johnson?

Johnson Aye.

Dale That's, that's, that carries.

Franz Did we get all five? Nick, Nick.

Dale Nick was the –

Plopper It was my motion.

Dale It was his motion.

Franz Okay, all right. Okay, all right. Sorry. Okay, so, all right, this is continued to next month. I guess I would like to see if you could bring a copy of the letter for the, for the parking agreement. Did you have that Roger?

Kilmer I'm sorry, I need to double check the votes because I only recorded four of them.

Franz Well Nick was –

Kilmer He was four.

Fedor And I seconded it.

Plopper He seconded the motion.

Dale Josh was second.

Kilmer Okay.

Taylor Josh, you, you were, you were in favor of the motion as well?

Fedor I was, yes.

Franz All right so it was 5-0 so.

Johnson I think you mentioned a sidewalk between the two properties. I think that needs to be shown on the plans. I think that any commitments that can be made would go a long way. If there's any modifications that can get to eight parking spaces that would be fantastic.

Fedor Along with, with those changes if any lighting changes may need to be made as well. I know we're going, we're wanting to go to a 15-foot pole already but if you're going to have some commitments with the neighbor, that lighting may need to be addressed.

Tharp Understood.

Franz All right, we'll see you next month. Thank you.

Next on the docket is New Business to be heard – 2024-77-MP, Allen Chan/Chan Minor Residential Subdivision, 430 North 1200 East, Sheridan, Indiana. Primary Plat approval of a 2-lot minor residential subdivision on 8.76 acres in the AG zoning district. Deferral of sidewalk installation requested. Jodi –

Dickey It's mine, yep, thank you. Here we have the, the subject site which is located at 430 North 1200 East. This is for a minor 2-lot single-family subdivision with a sidewalk deferral request. It is located in the sorry – Rural Agricultural district and this did receive a BZA special exception to allow for residential uses in the AG zoning district. Right-of-way is going to be dedicated along 1200 per County Highway requirements. There is an existing home on the site which has a drive to 1200. The new subdivision or the new lot which isn't very visible here but here's the existing home and lot. The new lot being carved out looks like this and the proposed driveway will also come off of County Road 1200 East. Both lots will be served by well and septic.

There are a couple of topics of interest. One is the sidewalk deferral request. Staff does support a deferral and there is language noted on the proposed plat that, and that's included in your staff report, that when it comes time for a sidewalk to be put in according to the town, that the owner of the lots will go ahead and put that sidewalk in. There is one additional item – this is a BZA concept plan so it doesn't match the plat as you see it but it does note the new proposed driveway. The County Surveyor's Office has noted the presence of a legal drain that crosses in this area so this new driveway will cross the legal drain easement. The County has given the petitioner construction standards that they need to adhere to when they put that driveway in.

So staff is recommending conditional approval with the sidewalk, with the sidewalk deferral. Along with that as we have done in times past, there's a bonding requirement and then we, the Plan Commission has waived that for minor plats in the past so the request is to waive the bonding requirement and then conditional approval of the plat. And I'm happy to turn it over to Mr. Chan or answer technical questions.

- Franz I got a quick question – flag lots – is this one of those or does that not, is that not rural requirement?
- Dickey The bond requirement is part of the –
- Franz No, flag lot.
- Dickey Oh, flag, flag lot. Oh, this property here – so the plat goes down here, meets the minimum width here, comes back and makes that turn so the plat does comply with the minimum –
- Franz Okay.
- Dickey It's a creative line drawing but it does comply with the setbacks and the lot widths.
- Franz Okay, I just was wondering. All right. Petitioner, if you have anything – state your name and address, if you have anything to add, comment.
- Chan I'm Allen Chan here for this 2-lot subdivision and we had to do a creative way to put this because there's a road frontage requirement we had to meet and then where we wanted to place our home there had to be a 40-foot easement on the side of the house so in order to meet that we had to do a little carve out and we had talked with Boone County on the well and septic system and they were okay with our setbacks and everything like that and as discussed, we are aware of the legal drain issue. We have located that already and they will put a reinforced concrete underneath the driveway in order to meet the, the standards for this lot.
- Franz Okay. Is there anybody in the public who'd like to comment on this matter? I have to ask. Anybody on the Plan Commission have any questions, comments?
- Dale I'll also add that because of the way they've drawn this creatively, they do not exceed the 3:1, depth, depth to width.
- Franz Okay. Any other questions, comments? If not, is there a motion on this matter?
- Dickey We, we do need to act on the deferral, the waiver of the bond and then the plat.
- Franz So there's three motions that are required.
- Dale In that order.
- Franz Yeah.
- Plopper I move that the proposed deferral of the installation of required perimeter pathways be approved as presented and with the condition discussed in the staff report.
- Johnson I would second.
- Franz We have a second. Any further discussion?

Dale Who was the second on that? I'm sorry, Brad?

Franz Any further discussion? Mike, would you please take roll?

Dale Nick Plopper

Plopper Aye.

Dale Brad Johnson?

Johnson Aye.

Dale Andrew Kossack?

Kossack Aye.

Dale Josh Fedor?

Fedor Aye?

Dale Dave Franz?

Franz Aye. Motion carries.

Plopper I move that the proposed waiver of the requirement to provide a performance bond or letter of credit when deferring the installation of, of perimeter pathways be approved as presented and discussed in the staff report.

Johnson Second.

Franz Second, any further discussion? Mike, would you please take roll?

Dale Nick Plopper?

Plopper Aye.

Dale Brad Johnson?

Johnson Aye.

Dale Andrew Kossack?

Kossack Aye.

Dale Josh Fedor?

Fedor Aye.

Dale David Franz?

Franz Aye. That motion also carries.

Plopper I move that Docket 2024-77-MP, approval of a Primary Plat dividing approximately 8.76 acres into two single-family lots and to defer perimeter sidewalk installation in the Rural General Agricultural district be conditionally approved based on the findings in the staff report, submitted Findings of Fact and staff recommendations subject to resolution of any outstanding technical comments as presented and discussed. These items shall be resolved prior to approval and recording of a secondary plat. The following language be included on the recorded secondary plat: Public pathway sidewalk as approved by the Zionsville Plan Commission shall be constructed to the then current town construction standards. At the time said public infrastructure is extended to the property line of the subdivision within one year of said extension reaching the subject site. The cost of design and install of the pathway shall be the responsibility of the property owner adjacent to the right-of-way at the time the condition is met.

Johnson Second that.

Franz Second, any further discussion? Mike, could you please take roll?

Dale David Franz?

Franz Aye.

Dale Josh Fedor?

Fedor Aye.

Dale Andrew Kossack?

Kossack Aye.

Dale Unanimously.

Franz Okay, yeah. Unanimous. All right, thank you.

Chan Thank you again.

Franz All right, next on the docket is an update on –

Dale Zoning Ordinance updates.

Franz Zoning Ordinance updates and is the Development Plan going to be a part of that too?

Dale Well yes, there's two separate items here –

Franz And those are both handled by Owen?

Dale Well no.

Franz No? Okay.

Dale No, yeah, the Zoning Ordinance updates there those, those pertain to accessory dwelling units and agribusiness and solar and wind energy, the penalty section and battery system storage. Owen Young is the Planner who has been primarily involved in drafting that language. He's not here today. I'm sorry to ask the Commission if you'd be willing to continue that matter to next month.

The Development Plan Jodi, Jodi Dickey has done the primary work on that and she's obviously here and she can present that for you.

Franz Jodi –

Dickey Just briefly, you have seen this before but it's been a minute so what we are trying to do is sort of break up the responsibilities for Development Plan approvals because they are mostly ministerial. We think that staff can handle some of the load and then the Plan Commission can have the rest of the load. So what we are proposing that the Plan Commission would have authority to review, and this is on page 2 of the staff report, preliminary plans for Planned Unit Developments those are kinda big, heavy lifting things so the Plan Commission could have those. New construction in non-residential districts – so empty lots that are gonna have new buildings on them like tonight's memory care facility. Addition or expansions of existing non-residential use of more than 50% of the current size or if action is required by the BZA, then that would drop to 20% of the current size so just that you would see some of those things as well.

There's a new item here – the projects related to agribusiness Type 2. Agribusiness is one of the things that Owen was working on so you don't have a whole lot of detail on that but agribusiness Type 1 and Type 2 are new proposals. Type 1 is less intensive and then Type 2 would be the more intensive. So we feel that the Plan Commission would probably want to approve projects relating to the more intensive agribusiness uses.

And then Institutional Use Master Plans. We talked about this a little bit earlier. It makes some sense to have like schools, municipal buildings, religious uses, universities, to do an overall campus Master Plan and then build those elements as their time and money and budget allows. So to have you guys approve a Master Plan but then staff can go ahead and say hey, this whole overall Master Plan was approved but you don't need to take this 2,000 square foot building back to Plan Commission because it was on your Master Plan so staff would review and approve those types of Institutional Master Plans uses. So stuff that doesn't modify the Master Plan.

So that's the big stuff. The other item – the things that staff would review and approve would be done, obviously, administratively, not in a public hearing or a public meeting. So we would say that there would be no public hearing for those particular items. We still haven't determined exactly, the Commission hasn't made a decision on whether or not they want Development Plans that come to you guys to also be part of a public hearing. I probably should've prefaced all of this with saying that Development Plans, by state law, you're not even required

to hear them at all. You're not required to have them. You have a Zoning Ordinance. You're only required to do hey, here's your building permit but if you're gonna have Development Plan approvals, you need to put it in your Zoning Ordinance, you need to have standards associated with it and then you need to have rules regarding that basically ministerial approval. One of the things that some municipalities do is take away the public because it's a ministerial decision they take out the public hearing component. That hasn't been determined by this Commission yet whether we still want to have a public hearing for those items that come to the Plan Commission so I think that's probably some discussion that you guys want to have. And I think that's –

Franz So when you say we wouldn't have a public hearing that's basically we would not take any public comment, is that correct? There'd still be the, the question and answer like we did tonight with Skiage?

Dickey Sometimes that takes, there's a, a level of frustration then. Folks come having an expectation that they have a say, right? And they're like I don't want this development to be approved because it's going to ruin my life, you know, I'm hyperbolizing, of course, but I, I don't want it. So you guys are saying but it meets our zoning standards, it matches the Comp Plan, it really meets the Findings of Fact, our hands are basically tied because it's a ministerial approval and we can't, we can talk to the developer and see if he's willing to do some things but outside of that, we're sort of obligated by our own rules to say yes. So –

Franz If somebody provides a comment letter, would that be taken or is that, would that be considered part of a public hearing Dan? Public, from the public?

Taylor Usually whatever is submitted is accepted.

Franz Okay.

Taylor So if somebody writes a letter, you can, that's been your practice so it just becomes part of the file.

Franz But that's, that wouldn't require opening the hearing up?

Taylor That's correct.

Franz Okay. There's been many times that we go through the process and there's people that ask questions and we ultimately know it's going to be approved so –

Dickey Uh huh.

Franz And this is really an all or nothing type situation. We'd still have our ability to question but we wouldn't have to take public comment so. I think it's probably something I would consider because you do give people when they have a public hearing the, the idea that they can influence and change this and I know it's tough. I mean I, I, I, in Zionsville you don't like to squelch but sometimes it takes too long for stuff that should be done in a couple minutes.

Fedor I, I've sat through when our hands have been tied in the past and, or I, I shouldn't say tied but it complies and people, I mean I, I think it gives them a sense of false hope that they're going to be able to get something changed in this. My question is if we, and I'm just thinking of situations – if, if we're having our discussion, can we ask a member of the public from up here to present something if we have a question or is that a big no, no?

Taylor Well you, you can, you can do that. Why what kind of circumstance would you do that?

Fedor I, adjoining landowner –

Taylor A neighbor?

Fedor Yeah, talk to a neighbor type situation where I'm just –

Taylor I think you may.

Fedor Okay.

Franz So when these matters would, would be presented to the town or the Plan Commission, would it note on the docket not a public hearing? Is that how they would be designated?

Dickey Uhh, yes. We would put them in a section of the agenda that says administrative actions or no public hearings or, we would separate them on the agenda somehow.

Franz I, I think we should think about it and probably come back and I don't want to, I think everybody should think about it.

Dale Well what we're doing, this was not an advertised matter so we're just taking your thoughts right now –

Franz Okay.

Dale Responding to your questions, if you have, if you'd like to table the matter even indefinitely that's your call –

Franz Well, I –

Dale Or if you're ready to advertise it for next month's meeting that's also –

Franz Well, I mean we're gonna be doing with Owen back –

Dale Right –

Franz I think we could advertise them both at the same time –

Dale Okay.

- Franz And deal with both of them so let's, it would give us a month to kinda think about that specific concept so.
- Dale I should add that we also presented all these ordinances for the Town Council members individually and talked to them about it and I'll have to admit there were some Council members who are torn, you know? They, they see some value in transparency and inviting the public in a hearing format on Development Plans. Others felt that yet just what we mentioned here that it's kind of an exercise in frustration to invite people to a hearing and yet tell them at the same time our hands are tied we have to approve this so –
- Franz Well we've done that –
- Dale Yeah –
- Franz There was one, it was the, it was an old, what was the, the putting the event center out on Old Hunt Club? Remember that?
- Fedor Oh, uh –
- Franz And we, we went an hour on that one and it was administrative.
- Fedor Yeah uh –
- Franz So umm –
- Fedor Yeah, perfect example right there.
- Dale But I think what we're trying to do is bring the, the larger projects –
- Franz Yeah –
- Dale That are more controversial to the Plan Commission and then filter out the ones that are less controversial.
- Franz Dan, I've got a question – so, if we, could we designate, is this all or nothing? They're all no public hearing or could we say this one we want to elevate to a public hearing?
- Taylor You could have a rule that says that, I just think, yeah, I, I would think that Town Council members may want more ability for the public to speak. It is, it is kind of one of the unusual aspects of Planning and Zoning law that you usually have. You want community input.
- Franz Okay.
- Taylor There's no right under the Open Door Law to allow public comment. Bodies may do so under their Rules of Procedure but no requirement but in the Planning and Zoning –
- Franz All right –

Taylor Boards of Zoning Appeals and Plan Commissions almost always allow that.

Franz So you'd recommend keeping it as is?

Taylor I would. I mean, I like the idea of the administrative approval –

Franz Well, yeah, I get that.

Taylor I think a public, I think allowing people to speak serves the basic purposes of the Zoning law –

Franz All right.

Taylor That's my opinion.

Franz Okay. All right, well we got a month to think about it.

Johnson Yeah, I would just ditto that the no-brainer stuff that is non-controversial, straightforward –

Franz Most of the –

Johnson Mostly ministerial –

Franz Most of the time –

Johnson That should be staff.

Franz There's nobody, nobody shows up for them anyway.

Johnson Yes.

Franz So –

Johnson But, I mean, my hope is that we do look at the more challenging projects and run a proper hearing or public session where people can understand and ask questions. We can always ask for commitments. If, if the ordinance changes, there may be some discretion that can be added to those decisions as well by the Plan Commission. So for that reason as well I'd like to have the public hearings.

Franz All right, that's fine. I've seen it go both ways.

Dale Well meanwhile for the next month let us know if you'd like to send us a message after reviewing it, now's a great time, now's the right time.

Franz So this doesn't take a motion to move it to next month does it?

Taylor No.

Franz No, all right. So, anything else?

- Taylor I think it's worth thinking about about public comment – there's a, a solar case that came out a couple years ago and it, it's in your training materials and in it the court said kind of, maybe someone in the public will think of something you all didn't think of and that's the purpose is, is, it's not for them to just say I'm against but maybe they'll make a point and you'll say wow, I didn't even think of that and so that, the court protected that in that right, the right to remonstrate and said you need to think about what the purpose of public comment is at a Plan, in this case, Plan Commission hearing.
- Franz All right. Anything else before we get to training?
- Dickey I'll just add that if you want to hear this as an item next month and you didn't get all your comments out tonight, please feel free to email them because I know this has been, it's new to a couple of you, just have some time to digest it if you have questions or comments, go ahead and send them and I can make sure I can get them incorporated when we do get it back to you.
- Dale So our understanding is that we're not advertising this for a hearing item next month – it's coming back as a, both these ordinances are coming back next month –
- Franz Okay.
- Dale As other business, right?
- Franz All right, Dan –
- Taylor A lot of training materials for you. I'm going to touch on some things that I think are just really important and we should talk on each year. Then I'm going to talk about some new things that developed in 2024. So if you'll look at page 2, you'll begin to see discussion of what the job is and what different case types are and that's just review for you.
- On page 3, we'll talk a little bit about conflicts of interest. So, in Plan Commission members have two different rules depending on the kind of case you're hearing. So, on legislative acts, so Comprehensive Plan, text amendments, rezones, PUDs – the standard is a conflict of interest. You may not participate if you have a, a direct or indirect pecuniary interest and it needs to be on the record and we usually kick you out of the room so you're not in the back of the room waving and influencing the decision makers.
- Johnson What's a good example of indirect? I understand the direct.
- Taylor Indirect would be that your, your spouse has a financial interest, you do not. That's the best example I can give you. There are some cases on it and I think that's what they would indicate.
- Franz The company you work for is involved is that indirect even though you're not petitioning?

Taylor That's technically not a conflict of interest unless you have an ownership interest
—

Franz Okay.

Taylor If you have an ownership interest, it's direct. I, I would, if it involves your company I would probably say get out of that case, yeah. Get out of that case. Not worth it. So, so conflict of interest – if you look at the next page – what about those zoning decisions? And believe it or not there's a different rule. It gets a little more complicated. So for zoning decisions which are plats and development plan reviews, it's a two-headed monster. First, you, you have to be, you have to be impartial and then secondly, you cannot have a direct or indirect financial interest. So there's a little more there. The reason for that is that on zoning decisions you are the decider. On legislative acts you are only recommending. So you can see it's a little more stringent here and so bias and prejudice are what we're talking about and oftentimes you will, you will see that they're just a little different rule so I'll try to remind you of that.

You'll see a little lower, Brad, you'll see a little discussion here on, further down on page 4, about what some of the cases have said about what's a conflict of interest and what is not and so the Perry Worth case which is now part of your, now part of your town, there is a, a 2000 case there in which someone alleged there was a conflict of interest because the member's wife owned a partial interest, not of the property before the Commission but next door and the court said that's not close enough. That's just not close enough. If it would've been the property it certainly would've been a conflict so where does that go? What is that penumbra of influence so to speak and in the, in the Perry Worth case they said that's, that's a little too tangential. That's not the same thing.

So then the question would've been bias. Impartiality, right? You'll note a couple other things in the Fail case out of LaPorte County. They said look, if someone challenges you because you did have a conflict of interest or you, you were biased or prejudiced against them, they don't have to show it really influenced your vote. Otherwise, it just automatically is going to kill that decision. They don't have to depose you and say Josh, how did that, did this affect your vote? If you have a conflict, you're automatically disqualified. I think that's why the statute uses that word disqualification.

If you go to page 5, I'm going to talk a little bit about bias and prejudice because the cases are really interesting to me but – so, I always say to members if, you know if you can be impartial. If it's someone you know is the petitioner or remonstrator and it doesn't influence you then go ahead. If you think it influences you to the place where you're not going to hear the facts fairly, hear the facts fairly, then ask to be recused. So usually bias or prejudice comes down to three things – positional bias, a statement that you make. Like if you say, I had a member once in another jurisdiction say I will never approve apartments ever and never and ever are two words people remember and so then here came a rezone for apartments and guess what? The developer said he needs to come off because he has said he will never do this and they were right. And then personal, obviously, maybe they're related to you or, or they're your best friend of something of that nature. That's where bias and, and impartiality come into play

but your own statements really can come in, into play and there's a, a religious land use case out of Colorado which the County Commissioner just kept, he went to coffee and he kept telling his friends he would never approve this mega church and he told them and he told everyone who would listen and this was something probably the days before social media but he just told everyone who'd listen he was never going to let it happen. He attended a really small church, like 50 people, and he thought that mega churches were the end of all religion and so but he told people. So after the denial, the really smart attorneys for the mega church started deposing his friends which is a great way to find out bias, right? So they would say did Charlie ever mention that he was in some way not open minded about our church? And, of course, several of them under oath had to say yeah, every Tuesday at coffee he would say that and they, they were able to challenge that decision. So I always tell people that it's not so much what you think sometimes, it's what you say.

If you will go to page 6, there is a kind of a, a breakdown of the types of cases you hear whether they're discretionary, non-discretionary. Sometimes it, it starts with you have no discretion but you have a little discretion. I've really, I've, I've laid that out that, I've laid that for you and, again, you know that in general anything you're passing on advisory you have all the discretion you want and you, you're not even making the decision. And then on the plats and DPRs, you, you might have some discretion but it's a whole different ballgame. So you always have to remember the type of case – what type of case is in front of me and what does that mean?

Rezoning then, the next section, again, the magical five factors are right there. No single criteria controls. The courts kept saying this because people kept saying well, they approved it but it was against the Comp Plan and the court said well, the statute just says that the Plan Commission and the Town Council have to pay due consideration to these five factors. It didn't say that all five have to be satisfied or that because what the Comp Plan says is the first one listed that it's more important. So the cases have made it clear that you're supposed to weigh all five and look at the totality of the circumstances and so it kinda comes down to taking all of it together, what do you think is really the more appropriate way to say it.

If you go to page 7, the courts that give wide deference to the Town Council on this and certainly you're advisory but wide, I would be pained to find a case where the reviewing court didn't say things like we give great deference to the legislature when they're acting as legislators which they are in rezoning and as long as they have some way to explain their decision, as long as their decision is not arbitrary and capricious, it's gonna be upheld. So what that tells us is that the courts what they're gonna look for is how did you and the Town Council make Findings? What did you consider? What did you discuss? How did you make your motion? You guys do a really good job of this but this is really the beginning point to see that if the courts are gonna give us wide discretion, as long as we can point to a staff report, something that was said in a meeting, your motions, your Findings, as long as we can show we were considering those five factors, the court is not gonna second guess the legislative body. They're, they're gonna defer. So that, that leaves, just shows you how wide open that is but it shows you the importance of making Findings and developing underlying facts

which support your Findings. It's the most important thing we do and in often you guys are expected to do the heavy lifting for the Town Council so the better Findings you send them, the better job they'll do.

Dale Dan, what is the repercussion if the record doesn't show that the Plan Commission gave consideration to those factors?

Taylor Well, the courts can easily find it was arbitrary capricious but there's one case which says specifically that just reading the five factors, saying I move we approve based on these five factors is not enough. You must, and, and you know, there have been cases where they just maybe the Plan Commission or the, it'd be the legislative body, they, they just, they latched onto one thing. They, they looked at how, how it would affect values in the surrounding area. It's all they talked about and that's enough. But this talk, just saying I approve based on these five factors and even saying the five factors, the court said not enough and it's later in your materials but, yeah, they, they say you've gotta have, you gotta show us the facts.

The, there's a, the, there's a case out of Brownsburg, it's in your later I put it in there for you but it's a memorandum decision which means the court, the Court of Appeals did not think it was very significant but I think it's significant because what they said was they said look, when the Plan, when the Plan Commission discussed it, when the Town Council discussed it, they said well, you know, the staff report says this and that remonstrator said that and the petitioner didn't really satisfy me about this and then they talked about all five factors and the court said that's what we're talking about right there. They did enough. There are facts which support each of their five, those five factors and they support the overall decision whether in this case it was, it was a rezone. They approved a rezone. So in that, you'll, you'll see later the, the cases really that's what they're looking for – did they have a discussion about the right things? Otherwise, were they focusing on those five factors that are in the statute?

You'll see those five factors about seven times in your materials. They're that important and that's what we're supposed to do. And also I'll mention this – I say this very intentionally, we should talk about the factors we're supposed to be talking about because there are cases which, where, where the persons challenging your decisions will say well, you know, they, they talked about these five things that aren't factors and that shows you that their decision was actually based on things they weren't even supposed to be considering. And so my advice to you is, is to don't get too far off track.

I had one client, I have a member on one of my client, one of my Plan Commissions and that member likes to ask questions that are not in any way germane. For example, if it's a restaurant, once she asked what was on the, what's going to be on your menu? Now I know it's fun but if they get a denial and they want to start poking holes at us, what are they gonna say? Well, she was completely off track. She was supposed to be looking at these factors and she was asking about the menu and apparently we answered the question wrong or our menu, she didn't like our menu. That is a very common technique. So I like to say when you prepare for the meetings, write your questions out in advance. Stick to the script. Even if it's just killing you because you want to know what

are, where, where the drive-thru, are they gonna have two drive-thrus or one? Whatever it is, if it's not relevant to the factors for that particular approval, stay away from it because it might be something even if, it didn't, it didn't play into your decision making, it might be something they kinda use against us.

Planned Unit Developments are on page 8 and, again, I think you guys do a good job with those, are familiar with them. On page 9 you'll note I just have one caution and that is when we have a Planned Unit Development the idea of the law is to allow the petitioner to write their own ordinance and that always makes me nervous. Now your staff will really, really look at it but I would encourage you to not skip that part of the packet. You need to look at that and when they start writing things that have different standards than your ordinance that's where we should highlight and say look, is this, is this what we really want? We require all kinds of things about landscaping and here they've written it saying they don't have to do any of those things we would normally see in our built environment. So I get really, that's where we want to really spend some time on PUDs. There's usually a lot of focus about end user and there's a lot of focus on the innovation and all that is great but I really worry about giving someone a pen and paper and letting them do that. Brad, did you have a question?

Johnson I did. So, has the courts fared it out the concepts of vacancies in the PUDs? The developer always wants to say it's silent, therefore, there is no regulation. The municipality says it's silent, therefore, you can't do it. I mean there's always been that kind of conflict of silence where the standard hasn't been clearly stated one way or the other. Has the courts sorted that out?

Taylor A little bit. There are not many PUD cases actually but what we try to do – your staff here will say they have a provision that says if it's not addressed then we, then our ordinance controls on that particular fact.

Johnson But the danger there is is it the ordinance 10 years down the road what the ordinance says on that day or is it the day they got it approved and therefore we have to research back what the ordinance said at that time?

Taylor We have to go back I think, yeah. I think we have to go back, yeah. But the, the thing is there have been a paltry number of cases on PUDs, it quite surprised me because they've been, they have been very controversial in some places but not many but that is, that right, that is the tension right there which is no, they allowed us to write our ordinance and we didn't say anything about that so we don't have, we have no obligations. I don't think they're going to win many of those. They haven't won. In the couple cases they've lost that argument but they're gonna keep make it so I think just at our, at our staff level is where we have to really make sure we're addressing those and your staff has done a good job over the years of doing that because we're, we're, we're aware of it and we talk about it and it's what keeps us up late at night.

And then if you to go page, I'm gonna ask you to go over to page 12 and you'll see a little bit about plats and waivers. So we talk about this, once there's a waiver request and you are getting more and more of those, now you've got discretion. Now you've got some discretion and now we can shape that plat a little bit and so I would just keep in mind that when you have waivers then that's

a little bit of a green light for us to get a little more active in the review process. DPRs are on page 13 and, again, I think that you have two what I call concrete factors and you had one and Brad mentioned it tonight which is more subjective and that is the, the goals and purposes of the Comprehensive Plan are they met? The other two factors you have in your ordinance simply say do they comply with the development standards or any other standard that would apply that we bring in. So, again, your, your review should be I would take out that Comp Plan and, and use it. Now –

Franz Let me ask a question on that – if we have a Comp Plan in, in an area we’ve made exceptions to the Comp Plan and the type of development that may not necessarily be stated. If we reject something right next to it that is trying to do the same thing, is that, does that become arbitrary?

Taylor No I think we, we might be focusing on the wrong thing. In the beginning of the, usually right in the beginning of the Comp Plan it’ll have a list of goals and purposes. That’s what we’re talking about.

Franz Okay.

Taylor The goals and purposes and they’re really broad and, and they’ll, they’ll talk about all kinds of things and sometimes that goes on for a couple pages so it’s not necessarily the ultimate land use we, we should be focusing on but our overarching goals. They, they are often repeated in the Zoning Ordinance. Nobody, we hardly ever read Chapter 1 of the Zoning Ordinance. I, I do, I’m, I have no life but, but you look at that and they’re really broad but they are some of the, they discuss harmony and built environment and transportation and quality of life and really Comp Plans tend to be very focused on big picture items and so it, it’s just a good thing to dust off and look at.

If you look at the bottom of page 13, I say that making Findings is kinda the whole ballgame and so I’ve got some pointers there or suggestions for you. Ask questions, ask questions of the petitioner, staff, of each other. That’s a, that’s a great way to make Findings is to ask questions and I like to, I have one client they just, they go right down the factors and they ask the petitioner and they ask staff the questions and then they talk about it themselves. That’s, that’s a, that’s a good start.

If you’ll go over to page 15, it is my job to tell you not to violate the Open Door Law and so here is all the information you would ever need if a majority of you gather in a room and take final action, it’s a meeting and it must be done in public. The definition of what it means to take action there at the bottom of 15, this is the trouble. Number, number A there, receiving information. So if you get together, a majority and you don’t say a word, you just listen. Can that be a violation of the Open Door Law? Yes and that’s where most people get in trouble. The others seem like a meeting, right? Deliberation, voting, they, they seem to make sense but that, that receiving information is where they get in trouble and we’ve got a case that I’ll tell you about later where a Plan Commission violated, violated the Open Door Law so we’ll talk about it in a little bit.

Just a reminder, on top of page 16, email is okay. I, I don't like email because you're, it doesn't mean you're having a meeting but every email you send to each other you are creating a public record and that document is accessible by the public and I hope you're being polite and not saying anything mean about anyone because there's no protecting it unless it's to me, I suppose, and you're asking for my legal advice, those are public documents. So I encourage you not to email but a Public Access Counselor has said that emailing each other is not a meeting, email to the, under the Public Access Law is just like sending an old-fashioned paper letter, unless it becomes a chat and a chat is a meeting so you have to watch that.

Bottom of page 16 – RLUIPA – the Religious Land Use & Institutionalized Persons Act. Well you can see why we call it RLUIPA, it's a little bit of a mouthful but that is a federal law which just says that you cannot discriminate against religious organizations in land use decision making and, and it's really an anti-discrimination law and this, the basis is we should just treat a religious petitioner exactly like an institution, might as well be a hospital or school. That's what I always say. We're not going to get into their religion, we're not going to do that and I know that sounds ridiculous but it isn't as ridiculous as you would think. Carmel had a case several years ago with, where there was an applicant and people were really concerned about the particular type of religion. There's a famous case from out west where the conversation at the Plan Commission meeting was primarily about whether they submerged when they baptized them or they just sprinkled them. It was all about the water and we should never get into that but just know that's out there and we've, I've got a fun what I call Friday Nights Light case I'll talk to you about in a minute.

If you'll turn over to page 18, I've got some best practices for you. I won't go over them, just I would ask you to, to read those on your own time so, I won't go over them all because you might want to leave tonight but they're worth looking at and it's just kind of my advice based on my experience of working with Plan Commissions.

At the bottom of page 19 I've got a section which is new this year on the Regulation of Rental Properties and I do this because when interest rates shot up in the last 18 months, it spawned a market for rental homes, new rental homes or rent-to-own. The increased interest rate raised the barrier to home ownership and many communities across the country started having entire subdivisions where they were all going to be rental houses and several local governments didn't like that but we have a couple problems here. We have a couple of Indiana statutes which say we can't really get into that and so I cited them for you and it's, it's, it's a, it's a, it's a problem and I just recommend that you treat them like you would anyone else.

Short-term rentals the state has jumped in here to, again, largely push us out of that regulation. There is some still, some local regulation allowed but we, if, if we have a residential district, we have to allow short-term rentals of owner-occupied period. Now if it's not owner-occupied, we can require them to get a special exception and we still can reg, we can regulate nuisance and noise and that sort of thing but this is an area which although it could change, the lobby for this industry has been very active and so I cited those statutes for you.

Vested Rights – I, we talked a little bit about it with David tonight. Vested rights on page 21, a very important notion. I've given you some information in there but just you need to be aware of that that there does come a point in time when a property owner had done enough where they have protected property rights and we can't take them and so this information outlines Section 1109 which is the Indiana codification of that. I have handled these cases in Federal Court where they get to make the federal argument and the state court arguments. 1109 is great because it just draws a bright line in the sand and says if you have a permit then you've got rights and under Federal law there is no bright line, it, it's apparently as soon as you spend enough money although I can't find cases where the Federal Courts have found somebody spent enough money yet. They always say they haven't spent enough money yet but if you look at right in the middle of the page under D – the problem is look how they define a permit. When they get to permit it is not what you and I think of as a permit. It includes a development plan. It includes a primary or secondary plat, contingent use, special exception or special use and then the one that really gets me because it's not related at all, the approval of a Planned Unit Development. So if a Planned Unit Development Ordinance is approved, they have vested rights under our law which is not what anyone would think. So this is something we just, I, I will alert you and communicate with you if we get into that situation but we had this situation two years ago and we had to be careful.

Page 22 – yes Brad?

Johnson Can I ask a question about vested rights? So cases where somebody has gotten a federal permit or a state permit before they even come to and make it known to the local municipality, is that considered vested rights?

Taylor Not under, not under the Indiana, not under 1109. Now there, there is a case, there are two cases, companion cases out of Jay County from years ago involving a landfill where they needed a state permit. The court, the Federal Court said, said that's not enough that the fact that they had received their state permit, but they actually ruled against the county because the county didn't have a Comp Plan and they didn't have zoning and so Jay County lost that case but there's some dicta in that case which would say that having a federal or state would not be enough. This becomes much more relevant now with some of our, some of our carbon cases that are coming through now where they, it's really almost entirely regulated and preempted by Federal law and they've gotta get all, this federal process is really long then they're going to have to get a state permit also so we'll have to watch that but 1109 doesn't say any permitted, it kind of, it has a list of them so that's why I answered the question that way.

Johnson I'm involved in one of those.

Taylor Good luck. It's so much fun, isn't it?

Johnson No.

Taylor Yeah. Carbon sequestration which is they're gonna liquify carbon and put it a mile underground, as you might imagine, makes some of the neighbors nervous

- about what that, doesn't that, is that like fracking, what is that? But I, that's, that's going to be most of these areas like, that involve heavy EPA regulation, this very issue is going to be interesting to me.
- Johnson Yeah the, the pilot project that the state is endorsed is 17 tanker trucks per hour for 24 hours a day for, for 12 years. It's 1.6 million tanker trucks is the pilot project being injected.
- Taylor That's gonna be, that's gonna be a lot. The one that I have experience with is an ethanol plant.
- Johnson One area.
- Franz Just keep going down the same pipe?
- Johnson Yep. They actually have two pipes but they're, yeah.
- Taylor The footprint of the drilling site is not very big but the plume –
- Johnson Yeah –
- Taylor Is miles and miles.
- Johnson Yep.
- Taylor But heavily reg, I had to read those regs recently and, yeah, that was a nice weekend. So, yeah, in that, in that area, for example, decommissioning that's all regulated on the federal side on your text amendment as your staff has done and put in front of you for solar and wind we, we have the decommissioning. The decommissioning for carbon sequestration is so robust that many local governments are just saying you have to just do your decommission through the EPA.
- Homeowners Association – it's not our job, the court said it's not our job to enforce those. If people don't like that that means the HOA has to go hire their own lawyer.
- Franz On vested rights, let's go back to F. So if the vested rights can sunset if there's no action on the property, correct?
- Taylor There's a time limit –
- Franz Right.
- Taylor On the vested rights 10 years, yeah.
- Franz Okay.
- Taylor They, they, they get the same rule for three but it has to be completed within 10. It's not forever, it's not a forever thing. We're usually dealing with the frontend.

Johnson Yeah.

Taylor Okay, if you go to the new cases which start on page 30, I'm sorry, start on page 29. Now I've left, the other cases we've talked about in the past, I leave in there for you and the part that I think is important I put in bold but I, that's, again, some of those are really good cases that you're gonna come across all the time but this year was not as active a year. BZAs were very active and I'm gonna talk about a couple of those because they apply but if you look at the first case, the Greenwald Family Limited Partnership case, this is one where, this was really tricky because what happened in this case was the developer made an application and, and, and when he came in to get his approval, the, it was conditioned upon all kinds of survey being done and a developer agreement and many things the developer was unhappy about so he didn't do them. Later the city came and bought the land and they developed it, they developed it themselves. So guess what happened? There was a lawsuit and in that case the court was asked to look at those conditions and see whether those conditions were rationally related to the interest the city had in having the development and in this case they said yeah, those things all have to do with development. None of those things were outside of the normal stake and so we have these, when you impose conditions, they have to relate to the finished product. They can't, they can't be something that, for example, I'll give an example – if somebody wanted to build a subdivision and the town wanted 11 police cars, well that's not really related and that would be a problem but this case they, the, the good guys won.

Number two, this is my Friday Nights Light case, City of Madison, Wisconsin, you might wonder why I'm including. Well, it's a 7th Circuit case so it applies to us so this is the way up and in this case the City of Madison required schools to have Master Plans and you've heard a little bit about Master Plans tonight and in that case the, the Catholic school wanted to move their football from Saturday afternoons to Friday nights, have lights and take advantage of all that and that school actually was kind of crammed into an old neighborhood so it wasn't like our public high schools here where you have all this land and spread out. This, the neighbors objected strongly to having all these bright lights and all this well into the evenings and the courts, and, and so the, the, the zoning authorities denied it. And so the, the church or the school sued under RLUIPA and the Federal Court said no, that's, that's actually fine. They have a Master Plan process and you want to amend your Master Plan, you have to go through that process and, by the way, and you have to be careful where you say this but the Federal Court, 7th Circuit in Chicago said that football really had nothing to do with religion and I know there'd be parochial schools that would disagree with that and some universities but I thought that was an interesting statement.

If you go to the next page, you'll see the St. John case. Now St. John, Indiana is a small town but it's a frequent flier in the courts. They are all over the courts and in this case this is kinda common but the, the Town of St. John had adopted a policy that if you annexed and unless the Town Council voted unanimously otherwise, everything had to come in as R1. Well the problem here was this property had been rezoned something other than R1 in the county and so, so they said well you can come in but you're R1. Well the, the, the owner objected and, and he lost. The court said no, no, no you can, you can do that. The law, the annexation law says you can do that. It says, in fact, not only can you do that that

you have to designate its zoning and so here's what, here's what I'll tell you, since involuntary annexation really doesn't exist anymore, in my opinion, because it can be, it, it's just all, there hasn't been an involuntary annexation for years now since 2021. I tried three that last year so I can say that with some authority but here's what happened – somebody wants to annex it's voluntary. Now why this developer didn't negotiate this little issue because it can be negotiated, I'm not sure, and maybe it didn't happen because they had one holdout on the Town Council who just wouldn't agree. I don't know those facts but the issue was can you do that and the answer is yes.

In the next case which is in Gibson County, the Subdivision Control Ordinance had a much stricter rule than the County Health Department about sanitary service and the Subdivision Control Ordinance said that you had to provide service, separate service to each lot. And the county health rules and the state health rules don't require that so someone came along and was going to do what's called a shared system which is completely allowed under the health laws and the Gibson County Planning authorities wouldn't approve it and so we ended up in litigation and the court said no, the Subdivision Control Ordinance wins. We don't care what the health rules say. The Subdivision Control Ordinance can have more strict rules than other people and that's absolutely okay, state or local, and so that's a pretty big decision.

Now then I'm gonna bring in a couple of BZA cases for you because they are, they are applicable and they were important. So we had a lot of cases this year but if you look at #5 Floyd County, this is an argument I've heard here before. In this case, the, the challenger said you know what happens, that Jodi Dickey, she prepares Findings, proposed Findings and by golly they went to that meeting and they just adopted them, didn't change a word. You know what that means? That means the Plan Commission had prejudged the case and in this case the court said no, no, no nice try. No, we'll listen to the record of the hearing and it sounds to us like the Plan Commission members were a little independent and they can make up their own minds and Jodi Dickey is not mind controlling them and that's what this case said. I love that because I've heard people say it right here. You people don't think about it, they, the staff prepares the Findings, you just do whatever they say. We've heard that so this is a case right on point.

Number six what's interesting is because we've never had this ruling, this came out of Monroe County where the, and Roger and Jodi won't like me saying this, but the staff got it wrong. They said we think, sometimes they're, not every use is in the use table and they have to decide where it most closely fits. So in this case this was going to be a, a, a metal, a scrap metal recycling facility and they said that sounds like garbage, central garbage, rubbish collection and so they said well, yeah, that's, that's where it goes so that means it can go here and then after the case the attorney for the Plan Commission said I don't think we got that right. I think we, we're in the wrong classification. I think that particular recycling sort of use should be here. We should've been here all along. So they sent it back to the BZA and said look, we want to revoke your prior approval because we had the wrong classification. Well now the Bedford Recycling already has approval. He objected, said you can't do that, you've already granted it. The court said if you make a mistake as a matter of law you can revoke your approval. Courts

have never said that. The case of first impression case that I liked a lot because it's good for us but that's a case with nothing.

And then the last case on page 31 which is out of Bloomington, a case which is near and dear to my heart because this comes up all the time. You talked about sidewalks tonight and a waiver and a deferral. Well guess what? Down in Bloomington they have the same sort of ordinance you do saying you have to install sidewalks. They started code enforcement to do that and the landowners challenged it saying you can't possibly have that right under Planning law. You have to do that under the Barrett Law which is the way infrastructure used to be funded starting in about 1908, I think, but this case was interesting because they said no, no, no, no, no – if you look at the zoning law, it says when you write a Zoning Ordinance you can deal with all kinds of things like pedestrians, thoroughfares, trails, it specifically allows you to adopt that and so as long as you have it in your Zoning Ordinance you're good.

Now, I'm almost done. Let, if you'll please just go to the last page, page 33, I'm going to talk to you about one new Open Door Law case because guess what? It was a Plan Commission and so here's what happened – up in Marshall County the Plan Commission was having an executive session to talk about personnel matters which is allowed under the law. They even noticed it and said hey, by the way, world, our Plan Commission is going to be meeting and they're gonna talk about personnel which is perfectly, exactly what they should've done but then when they got in there what they were worried about, people started talking about commercial battery storage and Marshall County has been kind of in the middle of some of these early solar cases and wind cases so now they're getting nervous about that. There were two problems with that – one, talking about text amendments is not allowed in executive session at all. And secondly, they didn't advertise that topic which they couldn't have so this is clearly an Open Door violation. Now how did anyone find out? You might ask yourself how did the Public Access Counselor come to know what they talked about in secret? Any guesses?

Johnson Brought it up in a meeting.

Taylor Nope. One of the Plan Commission members called it in. Said we weren't supposed to be talking about that. I, I know we weren't supposed to be talking about that – self-reported. I'm sure that person is very popular now with the other Plan Commission members but he or she did the right thing. I mean they weren't supposed to be doing that.

Franz But if they had, they must not have had legal representation?

Taylor Well, I can't answer. I would speak up and tell you not to talk about it. I would.

Franz I know you would.

Fedor inaudible 1:28:34

Taylor There are a couple of guys in the room we might say not all attorneys are created equally number one. Secondly, sometimes do not, some people do not take our advice. Shocker.

Plopper Who did they call it in to?

Taylor The Public Access Counselor. They filed a, they, they filed a formal complaint against their own Plan Commission, a member.

Franz So what happened? What, what was the result? I'm just curious. I'm not, I'm just, what's the penalty? I'm just wondering.

Taylor Normally the penalty –

Franz Not that we're gonna do it.

Taylor Normally the penalty is that if any official action has been taken it's undone –

Franz Okay.

Taylor You have to pay attorney's fees to the complainer and I'd like to know if that happened here but, but what happens is it makes, it hits the newspapers and it, it absolutely destroys credibility and peoples' faith in you and that's really the, the punishment is that then people don't have that. I've had that happen one other time. A Town Council member, it wasn't that, it was, I, I was there so I'll just tell you but I don't think it was that she, I don't think that she necessarily always followed the rule herself but she didn't like something that, she didn't like the outcome of something that was discussed so then she called it in so. I'll be happy to answer any questions. Please look at your materials and I hope they're helpful to you.

Dale Hey Dan, next month will the test be multiple choice or?

Taylor Ten easy, 10 easy multiple choice and there is, there is a bonus question that involves baseball trivia.

Fedor And Planning? Baseball trivia and Planning or just baseball?

Taylor Well the baseball would be more fun.

Franz All right, thank you Dan. Any, anything else for tonight?

Plopper I just say that football is a religion.

Johnson Subject to RLUIPA laws.

Plopper Yeah.

Franz All right, is there a motion to adjourn?

Plopper So moved.

Zionsville Plan Commission
February 18, 2025

Franz Second?

Fedor Second.

Franz All in favor?

All Aye.

Franz We are adjourned.