



## OFFICE OF THE CITY CLERK

KAREEMAH FOWLER, CITY CLERK

### ZONING & ANNEXATION

OCTOBER 4, 2016 6:30 P.M.

Committee Members Present: Oliver Davis, Jo M. Broden

Absent: Gavin Ferlic & John Voorde

Other Council Present: Tim Scott, Regina Williams- Preston, Karen White, Randy Kelly

Others Present: Alkeyna Aldridge, Kathleen Cekanski-Farrand, Adriana Rodriguez

Agenda: Bill No. 41-16 Commerce Center Development PUD Rezoning Petition

Committee Chair Oliver Davis called the meeting to order in the Council Informal Chambers. In anticipation of a large crowd, Committee Chair Davis recessed the meeting at 6:31 p.m. and reconvened in the Large Council Chambers at 6:35 p.m. He opened the meeting explaining that the committee did not reach a quorum in light of two (2) members being out of town, John Voorde and Gavin Ferlic. Committee Chair Davis also gave a brief overview of the agenda and asked Council Attorney Kathleen Cekanski-Farrand to explain the procedural context related to the continuance of Bill No. 41-16.

Council Attorney Kathleen Cekanski-Farrand explained that the legal description and addresses associated with the original bill on file with the City Clerk were amended in the Area Plan Commission. In light of the changes, the Council will need to give proper notice to the general public regarding a substitute bill. Thus, the Council must accept the substitute bill by proper motion at the next full council meeting and readvertise the new title before public hearing can be held on the matter.

Councilmember Scott asked Council Attorney to clarify whether or not the bill needs to be advertised correctly before Council can hear the substitute bill.

Kathleen Cekanski-Farrand responded the bill was properly advertised by the Area Plan Commission, but the Council must give proper notice to the public according to state law, specifically, Title 5 of the Indiana Code. The Council must accept the substitute and give forty-eight (48) hour notice of public hearing on the bill. Since the substitute bill was

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never accepted by the full Council, the bill must be accepted at the Monday, October 10<sup>th</sup> meeting, then advertised by the amended title, and heard for public hearing at a later meeting due to the Title 5 notice requirement.

Councilmember White asked what would happen if the Council did not meet the ninety (90) day timeframe in regard to zoning matters.

Kathleen Cekanski-Farrand responded that the petition would be defeated according to state law if Council failed to take action within the ninety (90) day period. She also mentioned the Council is well within its ninety (90) day period since December 20<sup>th</sup> is the deadline date.

Committee Chair Davis asked the petitioner and public if anyone had questions.

Mr. David Matthews, petitioner at 215 E. Colfax Ave., asked Council Attorney Kathleen Cekanski-Farrand to clarify the issue.

She responded that the Council needs adequate time to give proper notice of the substitute bill, but there's nothing the petitioner did incorrectly in regard to filing.

Committee Chair Davis transitioned to the presenters from the Area Plan Commission.

Keith Chapman, Area Plan Commission- 11<sup>th</sup> Floor County-City Building, explained that the petitioner is requesting to rezone the property from Central Business District (CBD) to Planned Unit Development (PUD). He mentioned staff had some concern about shadowing that the one hundred and seventy-five (175) foot proposed building would cast onto adjacent properties. He went on to show the site plan as proposed by the petitioner, Mr. Matthews.

Angela Smith, Area Plan Commission- 11<sup>th</sup> Floor County-City Building, expressed that the development standards as a PUD district were established by the petitioner. The most controversial issue has become the one hundred and seventy-five (175) foot proposed building. The uses are consistent with the Central Business District as it adds provisions for maker space and other minor modifications. Most staff recommendations focus on the PUD. Mrs. Smith offered a background of the PUD ordinance, stating that the intent of the PUD district has been used by developers to essentially write their own development standards and evade the process of variance requests. Where other zoning classifications can be requested they should almost always be utilized before petitioning for a PUD. PUDs have a very specific intent for creative developments that do not fit traditional zoning classifications. Mrs. Smith went on to state that there are five (5) items to be addressed by the petitioner which weren't addressed by the developer in the petition. Overall, the staff feels as if the proposal is not an appropriate use of the Planned Unit Development (PUD) district, but the APC was unable to reach a unanimous decision and forwarded a "no recommendation" certification to Council.

Tim Corcoran, Dept. of Community Investment- 14<sup>th</sup> Floor, wanted to clarify the department's support of the project despite the unfavorable recommendation submitted to the Office of the City Clerk. The original plan, Mr. Corcoran explained did not include much detail, so the initial Planning staff comments were based on that level of information. Once the department had further information, it was able to make a better recommendation to the Area Plan Commission. The developer committed to providing the following elements prior to the Area Plan Commission meeting: additional open space next to the existing Commerce Center and at the Side-Door Deli, appropriate ground floor activation with a new entry on LaSalle, adequate windows along LaSalle, a multiple façade, appearance as opposed to one repetitious façade, maximizing solar access to units facing the parking garage since non-residential units could face the garage, and appropriate signage. Solar access and shadowing on The Pointe remains an unaddressed concern despite no complaint from the Pointe.

Committee Chair Davis asked if the aforementioned points were submitted to Council by email.

Mr. Corcoran replied, yes.

Councilmember White asked a question regarding why the initial recommendation changed and the timeline of events.

Mr. Corcoran explained that the City Planning Team always contended that they could support the project if some of the issues were addressed. Since the petitioner addressed these concerns, the Planning Team was happy to amend their stance. Unfortunately, these commitments were received the evening before the Area Plan Commission meeting. He went on to clarify that any commitments presented to the Area Plan Commission can now become a part of the ordinance.

Committee Chair Davis asked Angela Smith to confirm whether or not the ordinance could be updated by the petitioners' presentation.

Angela Smith, Area Plan Commission- 11<sup>th</sup> Floor County- City Building. Confirmed that everything represented to the public in the Area Plan Commission is a part of the record and can be used to update the ordinance and become a part of the secondary PUD approval process.

Committee Chair Davis asked if Council would get an updated ordinance inclusive of the details presented to Area Plan.

Mrs. Smith responded that there will be minimal updates to the ordinance. There's record of the ground floor activation and adding additional entrances to LaSalle Ave., but given the nature of PUDs there's no specific, quantifiable details to add to the ordinance as opposed the general representation presented in the elevation.

Council Attorney Cekanski- Farrand asked if there is a format for the stipulations. So that everything raised at the APC public meeting and everything being raised now, gets appropriately added to the ordinance.

Councilmember White asked for Angela Smith to explain the secondary approval process. She wants to make sure that the Council and public have a clear idea of the processes and logistics involved in the petition.

Mrs. Smith responded that this is precisely why the APC changed the PUD process. It is too complicated and there's no other way to record what was presented beside minutes. So, interpretation becomes a major issue of concern, especially, since design stipulations need to be extremely precise which is difficult to do under PUDs.

Councilmember Tim Scott agreed that the process has become too complicated and encouraged the Planning Team, Area Plan Commission and the petitioner to make sure that they're all communicating with one another. The miscommunication has led to misinformation being given to the public which is a poor reflection on the City. He argued that it's important that we get this exactly right.

Committee Chair Davis requested that the email Mr. Corcoran sent to the Council be presented to the public as well, and asked how that information becomes public.

Council Attorney Cekanski-Farrand shared that information is made public through the City Clerk's Office and can be picked up as a hard copy in the Clerk's Office.

The Clerk's Office clarified that information formally submitted to the record could be located on the Council website.

Committee Chair Davis mentioned that he was concerned that nothing submitted to Council at this time is a binding commitment.

Mrs. Smith reiterated that anything represented at the public hearing would have to become a part of the updated ordinance.

Councilmember White followed up with Tim Corcoran to ensure that the Pointe Apartments received proper notice and is well aware of the development and its impacts given the implications.

David Matthews, 215 E. Colfax Ave. - owner of Matthews, LLC and petitioner. Mr. Matthews spent some time explaining the Regional Cities Grant, the process, the purpose and how Matthews, LLC was awarded the grant. He is excited about the potential of the Regional Cities Program and the implications it has on our downtown and the Michiana region at large. The project he proposed includes a full-service grocery store and pharmacy for downtown South Bend which is currently a food dessert and doesn't have a pharmacy for upward of a two (2) miles radius. Mr. Matthews displayed before and after photographs of other Matthews, LLC projects. He stressed that Matthews, LLC focuses

on optimizing vacant spaces and have not displaced any current residents based on the impacts of his developments. Matthews, LLC attempts to transform the downtown by increasing income diversity in the downtown. But, given the challenges of downtown South Bend, Mr. Matthews argued, attracting income diversity to the downtown has been an incredibly difficult task. Mr. Matthews concluded by discussing his site plans for 401 E. Colfax and what he hopes it will contribute to the quality of life in downtown South Bend. He also introduced Jonathan Jones to discuss further details of the project.

Jonathan Jones, 2203 Basin St., Marketing Director at Matthews LLC. Mr. Jones began his presentation by asking the question, “Are we overbuilt?” He emphatically argued, no. Downtown South Bend he argued has a workday population of 20,000 people with a residential population of only 3000 people. There’s currently a major shift from suburban areas to walkable, dense, urban living among millennials and empty nesters. People are looking for an opportunity to connect in their cities. Therefore, there’s a strong demand for apartment living in the downtown. In fact, mentioned Mr. Jones, Matthew’s LLC most recent project, East Bank Flats, has completely sold out in its pre-construction phase without any hard marketing.

Mr. Jones argued that the existing apartment stock in downtown South Bend is aging and not marketable to millennials. Further, the new developments that have come online cater to student populations near Notre Dame, not young professionals, small families or empty nesters looking for urban living opportunities. Mr. Jones went on to summarize several upcoming developments from Matthews, LLC that intend to meet these gaps in demand. He also discussed their affordability pilot program at the old Madison Center. The program aims to attract volunteer-minded individuals to the East Bank. Tenants will earn a substantial discount in their rent in exchange for the volunteer service in the immediate vicinity of the development. The development is a pilot to keep rents affordable while attracting responsible tenants to the development. Mr. Jones concluded his presentation and introduced Velvet Canada to discuss the architectural design process.

Ms. Canada is head designer and project manager for Matthews, LLC. Ms. Canada began by showing images of design work from various urban, global contexts that inspired her design for the Commerce Center development. The goal, as she explained, was to break up the length of the building to appear like several different buildings in one block. Ms. Canada went on explain design details and elements of the building within the context of the neighborhood and surrounding downtown area. The development she added, would significantly increase the density in East Bank and surrounding area. The developer would like to include green spaces on the roof and shared common spaces between the PUD development and the existing Commerce Center.

In regard to tax income, according to Ms. Canada, each floor is approximately \$96,000 of tax revenue each year. The development at its proposed height will add approximately \$1.1 million per year. Ms. Canada reintroduced Matthews, LLC’s owner, David Matthews to conclude the presentation.

Mr. Matthews made several comparisons to the City subsidies and development losses at Eddy Street Commons in regard to the parking structure. Since Matthews LLC was unable to secure similar subsidies from the City to support the parking garage costs, the developer argued that the proposed height of the building, along with an aggressive tax abatement strategy is necessary to support the cost of the garage in the long-run. Rather than burden the tax payer with the costs of the garage, the developer is taking a more risk averse strategy to covering parking costs. Mr. Matthews concluded his presentation and welcomed Council questions.

Councilmember Williams-Preston asked about access to affordable housing and if the current development will also become an affordable option for residents. Mr. Matthews explained that several of his developments are high-end, luxury apartments, but they are working through their Madison Center pilot program to offer affordable options. The programs pay people \$25/hour or up to half off their rent to volunteer in the neighborhood.

Mr. Matthews followed up stating they'll be implementing this model throughout their apartment developments to make their apartments more affordable since older development's prices will drop once their upgraded developments come online.

Councilmember Randy Kelly asked how many people submitted grant proposals to the Regional Cities and who is on the board.

Mr. Matthews responded that our region had thirty-nine (39) original applications. Of the applicants fifteen to eighteen (15-18) were invited to the second round review in which five (5) organizations actually submitted a paper to be reviewed by the state. The board included John Affleck-Graves and others leaders from around the Michiana area.

Committeemember Broden thanked Mr. Matthews for coming to present and asked why his proposal changed since his actual grant proposal. Especially, in regard to the changed height.

Mr. Matthews responded that they initially thought South Bend had a slim chance of actually receiving the grant, so not much detail went into the initial grant proposal. After the Michiana region received the grant, Matthews LLC. developed an actionable plan as opposed to a broad vision.

Councilmember Tim Scott asked Mr. Matthews to discuss the issue of solar access as it relates to the Pointe and units facing the parking garage.

Mr. Matthews shared that there's a ten (10) foot space between the parking garage and the commercial residential building. Two (2) separate buildings make the garage cheaper to build and provides air space and natural light to both structures. The developer intends to place service spaces and workout facilities facing the garage to maximize solar access to actual apartment units. Mr. Matthews also showed slides of various light and shadow

studies relating to the Pointe Apartment Complex. Their light studies show the shortest day, the longest day and average day of the year.

Committee Chair Davis asked that both light studies, from Matthews LLC and the APC, be submitted to the record.

Councilmember Tim Scott asked about the heights of all City buildings in relation to the proposed development.

Mr. Matthews responded that Matthews LLC is working on a height study. He also added that his building is twelve (12) feet taller than Hoffman Hotel which is two (2) blocks away from his proposed development. Mr. Matthews argued that his building will not drastically change the skyline of the City.

Councilmember White asked what feedback Mr. Matthews has received from neighbors regarding the height of the building.

Mr. Matthews responded that most concerns stem from the original planning staff report regarding the character of the neighborhood. Mr. Matthews added that he is largely invested and committed to character of the neighborhood, and that the design is largely based in respecting that character. Neighbors love the design of the proposed building. He went on to say there was no one to speak against the proposal at the APC and the neighborhood group is in favor of the proposal. He also shared the constraints of navigating the zoning process from a developer perspective. The zoning standards are out of date according to Matthews.

Committee Chair Davis asked if there's been any special effort to reach out to the Pointe.

Mr. Matthews responded that he spoke with the property manager, who is personally in favor, but she's waiting on the official corporate response from her boss.

Committee Chair Davis thanked Mr. Matthews and transitioned to the public hearing starting with those in favor of Bill No. 41-16.

Jeffrey Borowski- 603 Manchester Dr., a long-time resident of South Bend who works in downtown South Bend. Mr. Borowski doesn't see any reason not to allow the development, in fact, he views the development as a great economic stimulus to area.

Joseph Mittiga- 441 E. LaSalle, owner of Corby's Pub and longtime neighbor who welcomes the development. He's excited about the recent development and energy in the East Bank which gives him confidence to further invest in the neighborhood and his business.

Sean Shank- 116 S. Taylor St., long time resident who understands how the City works. He sees the development proposal as an opportunity that the City should welcome. Any improvement that is brought to the City, in his opinion, should be voted for favorably.

Mr. Shank works in Stark County, one (1) of the poorest counties in the nation. Stark County he argues would welcome the creative, young developers like Matthews LLC to improve the county, so we should welcome the development as progress that not all municipalities have the opportunity to consider.

Meghan Kirwan- 223 E. Colfax, a resident in a Matthews LLC development cites living in the downtown as the reason for her engagement in the arts which would not be possible without Dave's investment.

Deborah Mayer- 1524 Cedar Street, opera singer and adjunct at Notre Dame who's lived in South Bend for ten (10) years. The recent developments in downtown are exciting and David has proven his ability to create successful developments. The only reason she currently doesn't live in downtown due to the lack of a pharmacy and grocery store. She supports the development one-hundred percent (100%).

Adam MacMillian- 215 E. Colfax, says there was a lack of development and enthusiasm in the downtown before 2005, but now there's a substantial amount of progress in the downtown. Growing up his family never went downtown, so he welcomes this development as an opportunity to continue to attract patrons and residents to the downtown.

Willow Wetherall- 701 N. Niles Ave., supports the project and its design which she finds in line with the City's efforts to create a livable, walkable downtown. She recently moved with her family to downtown and convinced her mother to move downtown from Los Angeles. The downtown lacks family housing and is more geared to young professionals, singles and empty nesters. This development gives families the opportunity to consider downtown as an alternative to suburban living.

Mary Bundy- 318 S. Frances St., moved to South Bend six (6) years ago when it was considered a "dying city," but loves living in Howard Park along the river. She has seen her neighborhood turn around in that short period of time and is happy to see more progress come to the neighborhood through Matthews LLC continuing to invest in the neighborhood. The building height and proposed density excited Ms. Bundy about the energy it'll bring to downtown for baby boomers and millennials.

Cathy Dietz- 1031 E. Jefferson Blvd., family moved to South Bend from California in 1991 because of its beauty and affordability. She always recognized the potential in South Bend and especially in the Howard Park neighborhood given the proximity to the river. The last five (5) years has experienced a period of growth and the new project brings more momentum to an already improving development.

Rob Bartels- 760 Cotter St., in Mr. Bartels' opinion the only answer to poverty is prosperity and the only road to prosperity is development, investment, taking risk and making that work for everybody. This is a rare opportunity to welcome growth to the downtown which hasn't been available for generations. There are several new developments downtown that contribute to the momentum, but the current demographics



don't support a grocery store. But the development as proposed provides the necessary density and contributes to a higher assessed value. Mr. Bartels strongly supports the project.

Adam Toering- 236 S. Notre Dame Ave., lives in Howard Park and owns rental property in Howard Park. Mr. Toering is a history buff who supports a return to livable, walkable neighborhoods. He supports the addition of the grocery store and pharmacy.

Kurt Jankowski- 828 E. Jefferson, owns several businesses and lives in the downtown. He argues that bringing a grocery store to the downtown doesn't work economically despite the fact that he'd love to see that happen. We are quite fortunate that David Matthew and Rob Bartels are willing to make a risky investment, and the only reason this may potentially work is due to the Regional Cities money and the fact the building is twelve (12) stories. We'd all like to see it done at six (6) stories but it doesn't financially work, it works at 12-stories. Mr. Jankowski supports the efforts of Mr. Matthews and Mr. Bartels and ask the Council to support it.

Don Silverhawk- 1841 College St., is a proponent of large scale development in South Bend. He is a longtime resident who remembers 1968 when the last construction cranes built the three (3) buildings that puncture the City's skyline. This is first time in decades that we've seen construction cranes at work in our downtown, and Mr. Silverhawk wants to see large scale development in the City and a reversal of the suburban planning and zoning regulations that contributes to the large amount of surface parking and vacancy downtown. Mr. Silverhawk doesn't understand the height restriction and would like the plans to be updated and concurrent. He expects the planning situation in our City to be rectified and future coordination between APC and the City Planning Team.

Committee Chair Davis transitioned to those present to speak in opposition to Bill 41-16. He also mentioned people could email their sentiments if they didn't want to speak.

Robert Radecki- 123 S. Peter, long time Howard Park resident. He was formerly extremely active in City decision-making and development work. Mr. Radecki supports the concept of the proposal and applauded the APC for doing their job. After reviewing the concept and the public record, he wonders why Mr. Matthews is not conforming to the details of the plan and why he might be offered special treatment. Mr. Radecki argued that this town, the Council and many people have been working to build South Bend for years, and the millennial generation should never come and assert that nothing has been done.

Martha McCampbell- 1311 E. LaSalle, recent transplant to South Bend who was reluctant to move to the Midwest, but she enjoys the walking trails and East Race downtown. Ms. McCampbell is concerned about the scale of the project and calls for more compromise on the development. She appreciates the vision of Matthews LLC but believes that this is not a binary decision where we approve an out of scale building or not.

Karen Schefmeyer- 63262 Orange Rd., Ms. Schefmeyer is reading a statement to be submitted into the record from Cathy Reddy-White and Jan Cervelli, St. Mary's College President. Ms. Cervelli is a landscape architect who calls for more experts to weigh in on the development proposal given the out of scale nature of the proposal and lack of consistency with the comprehensive plan. Ms. Reddy-White suggested that Council reach out to University of Notre Dame College of Architecture experts. She went on to say that people who are urbanist professionals should not be making such a decision.

James Lewis-622 N. Coquillard Dr., lifelong resident and works in the East Bank at Tuesley, Hall, Konopa law firm at 212 N. LaSalle. Mr. Lewis loves South Bend and particularly the village feeling of the East Bank. He enjoys Mr. Matthews spaces and is favor of the current proposal at the scale appropriate to the East Bank Village. He is concerned about the precedent that this proposal may set for future development in the village. Mr. Lewis asked Council if a traffic study has been conducted in regard to the Sycamore entrance due to increased traffic that the development will bring.

Thomas Panzica- 416 E. Monroe, owns Panzica Building Corporation and submitted an exhibit to highlight the scale of the Matthews project in relation to other recognizable buildings in downtown. He is a part of the Wharf Project on the river. He usually avoids commenting on other developer's proposals because he's also typically on the other side of the podium. He cited the record from a 2013 BZA meeting where Mr. Matthews submitted a remonstrance against the proposed height of the Wharf project. He wonders why Mr. Matthews has changed his mind in regard to the village character, walkable character of the East Bank Villiage. Mr. Panzica is in favor of the development and continued growth of the East Bank Village but encourages Mr. Matthews to consider a smaller building to meet his development goals that is within the context of the area.

Frank Perri- 234 S. Coquillard, echoed Mr. Panzica's comments regarding scale and village character. Mr. Perri is the second largest stakeholder in the East Bank Village next to David Matthews. Mr. Perri asked why the developer needs a PUD instead of a variance. A PUD land use designation will stick with the land, so if he fails what will the next landowner do? Mr. Perri has some concerns regarding the actual financial feasibility of the proposal. Mr. Perri offered to pay for a study regarding the appropriateness of the project by an AICP professional. Mr. Perri asked for the development to be better vetted given the size.

David Matthews, Sr. 54609 Bradley Ave. Elkhart, Mr. Matthews argued that the Matthews project would drive rents down at surrounding properties and bring income diversity to the downtown.

Committee Chair Davis wrapped up the public hearing portion by sharing that the substitute bill would be accepted at the October 10<sup>th</sup> meeting and a schedule would set for Bill No. 41-16. He then turned the floor to Council for questions.

Committeemember Jo Broden requested that the following items be added to the Council record: Engineering Review, Traffic Study, Tax Abatement petition, Housing Study including the score card of future housing density, and the Parking Study.

Committee Chair Davis told the public that the Council is doing its best to do its due diligence on proposal of Bill 41-16. Mr. Davis asked Mr. Matthews to share with Council a written response to his 2013 BZA comments which are in direct opposition to his current statements to Council.

Committeemember Jo Broden also requested further clarification from Tim Corcoran regarding the email sent to Council. She asked if the statements made in the email are in reference to a ninety-six (96) foot building or a one-hundred seventy five (175) foot building. She shared that this decision is a one-hundred (100) year decision that the Council needs make sure that they receive all of the right information and get it right.

Committee Chair Davis echoed Committeemember Broden's sentiments and added to the precedent setting nature of the decision and potential legal implications if they don't get it right.

With no further questions, Committee Chair Davis adjourned the meeting at 8:59 p.m.

Respectfully submitted,

Oliver J. Davis  
Committee Chair