

TO: Councilmember Jo Broden
FROM: Ryan M. Dvorak, attorney representing Matthews, LLC
DATE: October 24, 2016
RE: Zoning law as applied to the Commerce Center PUD rezoning at 401 E. Colfax

During our conversation on Friday, October 21, regarding the PUD rezoning for the Commerce Center project, you mentioned concerns that the way in which the project was being handled "didn't have a legal leg to stand on." I told you we would be happy to explain why we felt everything was being handled legally and appropriately. This brief memo will touch on those points. I am happy to have a more in-depth conversation on the subject if you have any further concerns.

The Common Council has full legal authority to approve the PUD ordinance.

To begin with, per Indiana Law (I.C. 36-4-6-2), among the powers of the Common Council as the city legislative body, is the power to pass ordinances. Under one such ordinance, specifically, under Section 21-09.01(g), of the South Bend Code of Ordinances, the Common Council has the power and duty to: "adopt, reject, or modify a PUD District Ordinance."

The Common Council can delegate some duties to the Area Plan Commission (see I.C. 36-7-4-1511; and South Bend Code Section 21-05(c)(4)&(7)), but ultimately the Common Council is the authority on zoning.

PUDs are designed for this type of project.

A Planned Unit Development, under both state law and city ordinance is not only a type of building development, but also a regulatory process separate and distinct from the normal zoning process. A PUD is characterized by more flexibility to allow things like mixed land uses in a single development.

Under I.C. 36-7-4-1500, the state PUD statute, at Sec. 1505 says that the "legislative body shall adopt and amend a PUD district ordinance in the same manner as a zone map change," and at Sec. 1507 that "the adoption and amendment of a PUD district ordinance is a legislative act."

The City of South Bend PUD ordinance spells out the intent behind the PUD process at Section 21-05(a):

- (1) The Planned Unit Development (PUD) District is intended to:
 - (A) Establish a compatible and efficient mix of land uses and open space;
 - (B) Ensure compatibility with the Comprehensive Plan, surrounding developments and future development needs;
 - (C) Establish a creative approach in building design through architectural compatibility with adjacent buildings, general neighborhood design or by creating a unique style;
 - (D) Achieve flexibility and provide incentives for development that will sustain a wider range of choice in satisfying the changing needs of the community; and

- (E) Provide for any individual land or a combination of land uses not otherwise specified elsewhere in this Ordinance.

The proposed \$50 million project at the Commerce Center is exactly the kind of large-scale, mixed-use project to which the PUD process was envisioned to apply.

The flexibility built into the process does place some more administrative burdens on the Council, but for projects with impacts of this scale, the additional allocation of resources are appropriate.

Some of the PUD districts already approved in South Bend include: Eddy Street Commons, The Renaissance District Project, the Kroc Center, Ignition Park, the Triangle neighborhood, and the Ameriplex development.

If you have any additional, specific concerns on the legal aspects of the PUD approval process, I'd be happy to sit down with you for a more detailed conversation.