

Zionsville Plan Commission Special Meeting  
April 19, 2022

In Attendance: David Franz, Larry Jones, Sharon Walker, Mary Grabianowski, Cindy Madrick,  
Chris Lake

Staff attending: Attorney Bob Clutter, Wayne DeLong, Roger Kilmer  
A quorum is present.

Franz Call to order the Zionsville Plan Commission meeting on Tuesday, April 19,  
2022. Let's start with the Pledge of Allegiance please.

All Pledge of Allegiance.

Franz Wayne would you please take roll?

DeLong Certainly. Mr. Franz?

Franz Present.

DeLong Mrs. Grabianowski?

Grabianowski Present.

DeLong Mr. Jones?

Jones Present.

DeLong Mrs. Walker?

Walker Present.

DeLong Mr. Lake?

Lake Present.

DeLong Mrs. Madrick?

Madrick Present.

Franz All right we have all six members present. Um, all right, so, we've got two  
continuance requests and there's the potential for some additional continuances,  
um, on the docket tonight. Um, looking at the current May 16<sup>th</sup> meeting schedule  
it looks to be a rather full docket so what I would recommend is we have another  
special meeting next month on the Tuesday after which would be May 17<sup>th</sup>. Um,  
any discussion on that? Can everybody make that date? Do we need a motion to  
have the special meeting?

Clutter Yes sir.

Franz Is there a motion to have a special meeting?

Grabianowski I move we have a special meeting on Tuesday, May 17<sup>th</sup>.

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Franz Is there a second?

Walker Second.

Franz Okay great. Any further discussion? All in favor signify by aye.

All Aye.

Franz Opposed by nay.  
[No response]

All right. Motion carries 6-0. We will have a special meeting next month. Um, we have two continuance requests which were mentioned – Docket 2022-03-DP, The Woodmont Company/Kiddie Academy at Holliday Farms, 3650 Marketplace Drive, Zionsville, Petition for Development Plan Approval of a childcare facility with two Waivers on a 1.228± acre parcel within the Rural (Holliday Farms PUD) Planned Unit Development Zoning District. You just got a letter on this one, Wayne, a request – or Roger?

Kilmer Yes we did receive a letter but I do believe there, there's probably someone online –

Franz Okay there is? All right.

Kilmer A representative of petitioner.

Franz All right. So if you could put them on the monitor so we can – have them comment on this. Hello.

Bagley Hi. Good evening.

Franz Please name and address.

Bagley Hi. My name is Melanie Bagley. My address is 2348 Arezzo Lane, Allen, Texas 75013. Um, I come before you tonight, as you mentioned, there was a letter that was submitted requesting our formal continuance, um, for the application for the proposed Kiddie Academy at Holliday Farms. Um, the reason for the continuance, as stated in the letter, is simply that, um, we are continuing to work with the developer, um, as it relates to the design of the building, uh, the site layout, uh, based on the feedback that was given at the initial, uh, Planning Commission meeting. Um, also, um, working with, with Henke, uh, the developer, uh, to meet their minimum standards as well. Um, so we continue to press on and, and endeavor to, uh, meet their standards such that, that we meet the, uh, the Town's standards and, uh, can present to you on May 17<sup>th</sup>, um, a package that has been blessed by Henke, uh, as our developer.

Franz And hopefully the Town staff also.

Bagley Yes, yes, yes. Thank you.

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- Franz Um, anybody have any comments/discussions on this one? If not, is there a motion to continue this matter to May 17<sup>th</sup> special meeting?
- Lake Uh, so moved but would also add that, uh, a re-notice be filed for this project.
- Franz All right. So we have a motion to move this to the special meeting on May 17<sup>th</sup> with a re-notice requirement.
- Bagley Absolutely.
- Franz Any discussion? Is there a second?
- Jones/  
Grabianowski Second.
- Franz Any further discussion? All in favor signify by aye.
- All Aye.
- Franz Opposed by nay.  
[No response]
- Motion granted. We'll see you on the 17<sup>th</sup>.
- Bagley Thank you all.
- Franz Thank you. In addition, we have Docket Number 2022-02-DP, JC Hart/Marketplace Flats at Holliday Farms, Petition for Development Plan Approval of a 220-unit, uh, apartment development with three Waivers, on a 16.966± acre site within the Rural (Holliday Farms PUD) Planned Unit Development Zoning District. We do have a request for a continuance of this matter to the June 21<sup>st</sup> meeting. Is the petitioner present who would like to comment on this? Or online? Okay.
- Rabinowitch Yeah. Good evening, uh, Commissioners. Misha Rabinowitch, attorney, with offices at One Indiana Square, Suite 1800. I represent, uh, JC Hart, the apartment developer in this matter and we are continuing to work through some, uh, development plan changes and anticipate being ready to, uh, re-file in early May and to present June, at the June meeting. So, we'd ask that this matter be continued.
- Franz Okay. What is, Wayne, do you know what the date of that meeting is?
- Lake June 21<sup>st</sup>.
- Franz June 21<sup>st</sup>? Oh, that's right there. All right. Um, any discussion/comments on this one?
- Lake Uh, Misha, has your client had a chance to meet with the numerous remonstrators towards this project yet?

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Rabinowitch We had an initial meeting, I think that was back in February and in part that's what's resulted in some development plan changes and I would anticipate that we would spend more time with, uh, some of the neighbors that have expressed concerns before that June 21<sup>st</sup> meeting.

Lake Okay. I think we would all strongly encourage that that happen again prior to that meeting.

Rabinowitch Sure.

Franz And also it, it is June 20<sup>th</sup> – not the 21<sup>st</sup>.

Lake Oh, okay, so –

Franz So – and –

Lake The paper in front of me lies. Sorry.

Franz And I, and this one will require a re-notice also. So –

Rabinowitch Understood.

Kilmer Excuse me. The June 21<sup>st</sup> date is because June 20<sup>th</sup> is the day that the Town is recognizing –

Lake Yeah.

Kilmer Recognizing Juneteenth.

Grabianowski Juneteenth, that's right.

Franz Okay, so –

Kilmer So the Town Hall will be closed that day.

Franz So it's the 21<sup>st</sup> – okay.

Clutter Okay.

Franz All right. So it is June 21<sup>st</sup> again. All right. Um, any further discussion? Is there a motion to continue this matter to the June 21<sup>st</sup> meeting with re-notice?

Lake So moved.

Franz Is there a second?

Walker Second.

Franz Any further discussion? All in favor signify by aye.

All Aye.

Franz            Opposed by nay.  
                    [No response]

Motion carries 6-0. We'll see you on June 21<sup>st</sup>.

Rabinowitch    Thank you.

Franz            Next on the docket we have Continued Business from the April meeting 2022-07-Z, Henke Development/Promontory Planned Unit Development, 9825 Windy Hills Drive, Zionsville, Petition for a Zoning Map Change – Zoning Map Change of 321.48± acres from the Rural (AG) General Agriculture Zoning District to the (PUD) Planned Unit Development Zoning District to permit a single-family residential development. Is the petitioner present?

Price            Yes, good evening Mr. President and members of the Plan Commission. My name is Matt Price here tonight on behalf of Henke Development, have, uh, representatives from, uh, the company here this evening, Steve Henke, uh, sitting in the front row as well as Brad Henke, uh, Doug Fleener – Doug, I didn't see you join us and then, uh, our civil engineer, uh, Phil Sundling. And, Phil, if you can get me kind of started here with the PUD – thank you. So we, uh, we had the opportunity to, uh, have our initial hearing on this matter last month, uh, received feedback from the Planning Commission and have, have also had, uh, individual meetings and, uh, additional conversations with staff and I think, uh, before I go any further with the presentation tonight, uh, I did want to make a special, uh, thank you to, uh, the staff and, uh, Mr. Kilmer and George Lewis who's with the Department of Public Works and the Town's – serves as the Town's engineer because each of them has taken, uh, additional time with us as we've worked through various aspects of the, uh, proposal.

What I thought I would do this evening is highlight, uh, the material changes that we've made and, uh, and then be available to answer, uh, any questions that you have. Um, one of the, uh, one of the, uh, comments we received at our last, uh, meeting was to better identify on the Concept Plan which is Exhibit, uh, 2 to the, uh, Planned Unit Development Ordinance the specific location of the development – what we're calling development amenities uses. So I'm going to, I'm going to kind of fast forward to that plan and you'll see the, uh, the updated Concept Plan here and so what we've done is delineate where each one of those development amenities uses is anticipated to be located. So, uh, we've labeled those both with regard to the existing farmstead and existing, uh, home locations, uh, the common areas comprised of the, uh, existing lake as well as the perimeter properties along the southeast and, uh, southwest, uh, as well as the, uh, equestrian areas that, uh, adjoin the entryway off of U.S., uh, 421. And the idea there was that while the proposal is for a mixed use, the original iteration of the PUD, uh, could have been interpreted in places as permitting each one of those development amenity uses anywhere throughout the development and that's really not the idea. The idea is to locate those, uh, amenities in specified areas. They would be accessible to all of the residents within the community but, for example, a community meeting phase, a café serving, uh, residents, uh, the boathouse – those weren't anticipated to be located just scattered throughout the district but in specified locations and so that's what we attempted to do with

those refinements to, uh, the Concept Plan. We're also asked to, uh, better delineate, uh, the internal, uh, trail, uh, system which, uh, primarily, uh, is around the – begins up in the very far northwest corner of the property and then kind of meanders, uh, along the eastern side of the lake and then around the, the southeastern part of the lake and then up and around back to the southwest and that's that gold line that you see, uh, traversing the, the property in that, in that area.

An additional comment we received was to identify both whether we needed to have all of the uses that we originally identified and classified as development amenities uses and if so, could we identify whether certain of those uses would be, in fact, accessory, uh, in nature. Meaning that they would be incidental to the structure that they would be located within and so in Exhibit 3 to the PUD, we did really two things, uh, one of which is eliminate certain uses that upon, uh, further review we felt like were, were unnecessary or unlikely to actually, um, be used and then also identified which of the remaining, uh, development amenities uses would be accessory in nature and so you'll see, for example, that where we have a permitted development amenity use as a café, a coffee shop, uh, a tavern – we've made each one of those items, um, as accessory to the development amenity locations. Uh, so that is to denote the intensity and scale. It's intended, again, to serve the residents of the community and not be a commercial offering outside of those, of that, those residents. In addition, uh, you may recall that during the public hearing portion of, uh, our meeting, uh, last month, we received a comment from one, um, property owner – who actually turned out not to be an adjoining property owner but a property owner further south of our property who had existing agricultural operations and so we were asked, uh, by the Plan Commission to add a, an acknowledgment of a right to farm and so we have taken that language from, uh, another development here in Zionsville incorporated that specifically into the PUD and that, uh, acknowledgment is, will be a requirement, uh, for, to be acknowledged by each, uh, single-family residential property owner as they purchase a lot and so that's been, uh, specifically added to the PUD as well.

With regard to, uh, some other what I would call, um, standards or processes, uh, that we've, that we've sought to kind of refine, um, our understanding of with the Town, we have worked very closely with, uh, the Boone County Health Department with regard to, uh, the use of septic systems and have identified the soil experts that will do, uh, the tests on each lot. We are making it a condition to obtaining a building permit that, uh, each individual lot have, have, uh, passed the test for appropriate soils and have a septic system that's designed and uniquely suitable for that lot meaning that it has the associated, uh, under drains, um, and that the system and its approval is subject to receiving a building permit, uh, from the Town of Zionsville. We've also, uh, had additional conversations with the Town with regard to the proposed, uh, drainage system for, uh, the project. What we've tried to make clearer in this submittal is that our intention is to use as much as possible low impact development, uh, standards that are set forth in the Town's Stormwater Control Ordinance, um, where those are applicable to our rural setting. But we're trying to take advantage of the existing topography, the existing lake, uh, the existing, uh, natural water courses that exist, uh, on the property. However, we want to be clear – the final drainage plan is subject to, uh, Town approvals and I'll elaborate a little bit, uh, more on that,

uh, as we go forward with some of these other systems. Uh, similarly, we've worked closely with the Zionsville Fire Department with regard to, uh, the system for providing, uh, water supply and a distribution mechanism for fire protection and then lastly we had commissioned and have received the results of a aquafer study from American Structurepoint confirming, uh, that there's adequate, uh, water supply for each one of the well systems to serve the individual, uh, lot. But in each of these cases with regard to septic, drainage, well systems and fire suppression, each one of those elements would be subject to and part of our development plan, uh, approval process. And so what I want to, what I want to make abundantly clear is that we are not seeking any, um, any truncated processes, uh, differing processes, alternative processes to the development plan review, uh, process that the Town offers and requires for all, uh, major subdivisions. So in each case, uh, whether it was for a single-family residential use like the first phase of single-family lots or a development amenity use, we would anticipate each one of those uses would come through this Planning Commission and be required to receive development plan approval on the same standard that any other project would be required to receive development plan, uh, approval.

The one caveat that we do make clear in the, in the, uh, PUD, although I think it's, um, somewhat assumed but we've nevertheless made it expressed, is that the individual custom homes are not meant to be subject to architectural review as part of the development plan process. That's, that's something that would be done internally through the, uh, community's architectural review board but beyond that, everything is, uh, fair game and subject to the development plan, uh, approval process and that's been a dialogue that, uh, we've had with, uh, Town staff and, uh, including, uh, uh, the Town engineer, to make that, uh, clear that, uh, that's our intent and that is the, uh, what we, uh, believe the, the ordinance requires and, and wanted to place that of record for you this evening. Um, we, um, we also wanted to note that, uh, um, as, uh, as was done at Holliday Farm, um, the project is, is, uh, currently being, um, reviewed and considered as a location for Homearama, uh, kind of a marquee, uh, exhibition of home building and, and, uh, the top neighborhoods in the greater, uh, Boone County and suburb, north suburban area and, uh, it's very important for us to the extent possible to stay on, on schedule and so we are requesting, uh, approval this evening. We know the staff has recommended a continuance but we felt like that with the clarification on the approval processes which is what we understood was maybe one of the items of, of, uh, where staff wanted further clarification that that would allow us to move forward, uh, this evening if it's your will to do so. Um, we'd appreciate any additional feedback you would have to offer and, uh, appreciate very much this special meeting this evening to consider this matter.

Franz All right. Thank you. At this point is there anybody in the public who would like to comment on this matter? Anybody online? Nope? All right. Um, Roger, you handling the staff report?

Kilmer Yes sir, thank you. Um, I appreciate Mr. Price's summary of, uh, the changes to the, to the PUD ordinance that have, um, occurred since our last meeting. Um, there are a number of comments that, that I, I want and need to present tonight and I'm speaking on behalf of when I refer to staff I just wanted to be clear not referring solely to the Planning and Zoning staff but, but all of the Town staff

that, that has to go through and review this project so that would include engineering, fire – all the different departments, uh, so when I refer to staff it's not a singular or solitary, um, group, it, it's the entire Town staff, um, and where there are distinctions I will try to make that clear as, as I present that information. Um, we feel that, that the, uh, proposed ordinance has made, uh, positive steps since the last meeting. There have been improvements to it, um, and we appreciate the, the petitioner's, um, uh, response to, uh, the comments, comment letters that have been provided back to them, um, however, there are – we're finding there have been some, um, responses in the response letter to us that while favorable and, and are moving in the direction that we would like to see, those have not been fully incorporated into the ordinance itself. And, and in this case I'm speaking specifically, uh, regarding some of the engineering comments that, uh, I had an opportunity this afternoon to, to speak with, uh, George Lewis, uh, about this topic, uh, this project and, and some specific topics and he felt that, again, many of the responses in many of the comments in the response letter from the petitioner were moving in the correct direction but they had not been fully incorporated into the ordinance and so, therefore, we are curious and we were even receiving, um, revisions to language yet this afternoon which is fine and we appreciated that but we are curious – and this might be a question that I'm posing to counsel – if there are things that we are now seeing that we would like to be incorporated into the ordinance and you would take action upon this matter tonight, how are those things incorporated into the ordinance as we forward it to the Town Council for their consideration? So – if you'd like to respond now or I can go on –

Clutter            Certainly and I don't know which items specifically you're referring to but you could – if it was the Commission's will, they could certainly make any approval or recommendation of approval subject to the ordinance reflecting those changes. I mean if they're delineated and that, that in itself becomes difficult –

Kilmer            Yeah.

Clutter            If it's one or two things – if it's a litany of things then, then you've got a little bit more of a chore but –

Kilmer            And because I don't speak "engineerese", um, I, I can listen to it at times and somewhat figure out what they're saying but I don't speak the language fluently, um, I, I, I would be hesitant to try to summarize those items out of fear of misrepresenting or not, not stating correctly –

Clutter            Understood.

Kilmer            What, what it – what would be needed.

Clutter            Matt, just as, as it relates to that – are these engineering comments things that you are comfortable with committing to incorporating into the PUD ordinance?

Price              I, I think so – I mean, we, we had some additional dialogue with Mr. Lewis as well and we felt like we were saying the same thing and perhaps that's why there's a perception that the comment letter response is saying one thing and the ordinance is saying something maybe a little bit different. We felt like we were

saying the same thing but perhaps not, uh, with the exact verbiage that George would like to see but substantively we felt like we were in total accord. I can give you an example is, uh, George wanted us to provide – I apologize – George Lewis, uh, wanted us to provide that, um, essentially to the extent that we were following the low impact development techniques but those techniques required some variance from the Stormwater Control Ordinance that we would say that expressly in the PUD.

Clutter Gotcha.

Price And we felt like we had covered that by saying it was subject to Town approval but if we need to say that expressly the way George Lewis would like us to articulate it, then we're, we're actually fine with that. And that's what we kind of felt like the nature of the comments were as opposed to disagreement.

Clutter Can I ask Mr. Sundling – engineer to engineer are you comfortable with –

Sundling Yeah –

Clutter Those?

Sundling Yep 26:18 inaudible off microphone.

Clutter Yeah, just so we've got that.

Sundling Phil Sundling, Henke Development. Absolutely, yeah.

Clutter So, so in terms of the, the comments from Mr. Lewis – I don't want to misstate anything here – but you're comfortable with incorporating all of those into the ordinance?

Price We are.

Clutter Okay.

Price Yeah.

Clutter Does that answer the question, Mr. Kilmer?

Kilmer It does. It was more of a procedural question but –

Clutter Yes, yes –

Kilmer I wanted to make sure –

Clutter As long – I, I wanted to make sure they were comfortable with all of those comments. If they are, then the Plan Commission, if they're willing to recommend approval, they could certainly do it conditioned upon the incorporation of all of those engineering comments into the ordinance.

Franz And if they could not come to agreement would this just come back to us –

Clutter Yes sir.

Franz Next month?

Clutter It would.

Franz Okay. Or whenever?

Clutter Yes.

Franz All right. Go ahead.

Kilmer Thank you. Um, so, somewhat as, as a final comment as to why, uh, I, I would just like to elaborate a little bit as to why staff has, has been – we've tried to be very diligent in the review of this project, uh, for this reason. Um, any petition that comes before us – whether it's a development plan or, or any, any petition before the BZA, what, whatever it is we do take seriously. Um, we are, we are called to do that. A rezoning though kind of puts – takes it to another level because now we're, we're definitely impacting surrounding properties in the long-term use of the prop – of, of the subject property itself. But even on a simp – but even on a standard rezoning we have at least have the Town Zoning Ordinance to fall back upon and know what the standards are. When the rezoning is a request for a Planned Unit Development, we're essentially replacing the, the Town Zoning Ordinance with new standards that are subject to interpretation at times and so that really, um, causes us to, to put the spotlight on it and try to make sure as much as possible can be solidified in, in the language and that puts the Town and the developer in, in a unique position whereas to the point where the Town would like every possible question answered. The developer can't do that at this stage. So there's a conflict and, uh, the goal is to find whatever the happy medium is or maybe acceptable medium, um, and that is what we – that is why we've really cast a, a fine microscope on this project. Um, speaking now individually for the, the Planning and Zoning group, we, we feel pretty good about the language of the PUD ordinance but, again, we are only one department and as, as we've already discussed, there are other departments that still have some questions. Again, they would like things nailed down –

Clutter Uh huh.

Kilmer But we also realize that's a conflict between the petitioner's request and, and replacing the, the existing Zoning Ordinance with a PUD ordinance. So –

Clutter And if I could follow up on that – outside of Mr. Lewis's comments, were there other department comments – fire department or others that we need to address here?

Kilmer Uh, no sir.

Clutter Okay.

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- Kilmer No sir. With that I, I'll pose my comments, um, and I feel obligated to still state that staff recommends a continuance just so we can, could iron some things out but, obviously, it's up to the, to the Plan Commission as to how to move forward. I'll be glad to answer any questions.
- Franz All right. Thank you. At this point I will open it up to any members of the Plan Commission with questions/comments.
- Lake Uh, Mr. Price, can you help me with your diagram there? Um, I'm trying to understand exactly where the limits of the development amenities are. Are those the, uh, dashed lines, uh, that are on either side of the existing estate home? Is that supposed to denote the boundary? It's, it's not very clear and graphically we could've used something a little more, more clear, um, and we have a note that says development amenities but –
- Sundling **Inaudible off microphone 31:12**
- Lake That's fine.
- Sundling **Inaudible off microphone 31:14**
- Lake Okay.
- Sundling **Inaudible off microphone 31:20**
- Lake Yep.
- Sundling **Inaudible off microphone 31:22**
- Lake Yep.
- Sundling **Inaudible off microphone 31:24**
- Lake Okay. So those lines are meant to be access trails?
- Sundling **Inaudible off microphone 31:28**
- Lake Or connectors or –
- Sundling **Inaudible off microphone 31:30**
- Lake Okay.
- Sundling **Inaudible off microphone 31:32**
- Lake Gotcha. So you drew those as the boundaries to the development “amenity” zone.
- Sundling Yep, yep.
- Lake Okay. Okay.

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- Jones So the intent is anything that's listed as development amenity can have the commercial type uses? That will be the non-residential?
- Price That's correct. Yep.
- Jones And is there any limit to that? We've got a fair amount of acreage along 421 that seems to be kind of open.
- Price Well that's a good point. Our, our intent, our intention under the, for the land around 421 is for that to be the equestrian pasture area and the stables.
- Jones Then why does it need to be –
- Price We could, we could –
- Jones Allowed to have development amenities?
- Price I'm sorry, Mr. Jones – I just didn't hear you.
- Jones Well if I'm reading this right, anything – and if I just understood what you just said – uh, the areas that are listed as equestrian fields, the open space in the southeast corner of the property along and everything along, um, CR 1000 East, um, portions up there at the corner of 1000 and 200 North, um, and then as well as some of the areas around the barn and the, uh, existing houses, those will be entitled to have any of these, for lack of a better term, non-residential or commercial type uses and there seems to be no limit to the amount of that that can go on there based on the acreage shown. Is that a safe assumption?
- Price I, I think that is a safe assumption. Um, I can say though that we could further limit the location of development – the specific types of development amenity uses to subareas because the intention, for example, was to, uh, for there to be a single boathouse that may, for example, have one of those, uh, ancillary uses rather than, um, to put an ancillary use, like a café, in the horse stable but, but I'm – but your point is a fair one as far at least literally today.
- Jones I guess my, my point is – of a 321-acre development, we're entitling you to 60 acres of, um, taverns, brew pubs, microbreweries, health/fitness, you know, there's a, a pretty long –
- Lake Yeah, I, I guess I – to build, to build on that, you know, if, you know, as an example you happen to build a development with a couple million dollar homes and then decided to put apartments right next to them and had a bunch of remonstrators we would hope to not have that in this case where you build these homes and then decide that there's a really good viable commercial use to put restaurants and taverns and coffee shops all along 421 taking up your horse property because technically they're allowed by your PUD but then your residents aren't happy that you've created this entire commercial strip solely for the benefit of the developer across 421. That's the concern.
- Price Understand. And we could, we could definitely delineate that more specifically so that the, those commercial uses are – that, that was what we were trying to do

by saying they were ancillary to, in our minds, ancillary to the boathouse and meeting space that we're providing near the lake but not intended to provide it outside of that area.

Lake Was that a correct, uh, example though?

Jones Uh, exactly.

Lake Expounding on your concern?

Jones Correct.

Lake Okay.

Jones Um, the other question I'm having is there's – within the open space you, you've marked out this trail and you talk about it being an equestrian-based development. So are the trails for horse riding?

Price No I don't believe so. Uh, uh, Phil could – I think that trail is, is for pedestrian use.

Sundling Yeah.

Jones Huh. So then – I guess the other question then will this development be then open for people to ride their horses from the equestrian fields to their home?

Price The, the answer to that is no.

Jones Okay. So, I'm just baffled then because as I look at this there's a substantial, substantial number of properties that do not abut the lake but they're called part of the lake and equestrian district and then there's all the properties that really have no connection to the equestrian district other than there's an area that potentially could if the commercial development that we've – might entitle it to be doesn't force it out. Uh, once again, Matt, in plain and simple terms I am not particularly comfortable with the wide open nature of the ask and second to that I am not comfortable that we are putting our staff in this situation whereas if we grant you some type of approval that the burden falls entirely upon the staff and that's not the plan. Um, I think I've said this kind of stuff over and over about different developments and ideas that come through – I am not in favor of putting the responsibility on the staff, on the building inspectors, on somebody else. The goal of the developer is to commit in a clear fashion to us what they intend to do and do it in a timely fashion so the staff can review it and make sure it meets the standards so that when it comes before us as well as when it goes out in the public everybody's talking about the same thing. And the situation here that you are asking for and asking for some sort of approval tonight puts the entire burden there. And I do not think that is correct and I do not agree with that.

Price I, I appreciate your comment. I'm not – I, I would respond this way though that I think that both the staff and the petitioner have responded timely. I, I – for the nature of the comments that we've received, I think that we've done a yeoman's effort of responding to that and responding to the, to the direction that we thought

we were receiving as far as how to delineate the location of these uses. What you're describing though a further tightening of where those uses go so that equestrian uses are going in the area that we're showing as equestrian – we have no issue with that whatsoever. We can certainly further, uh, delineate where those permitted uses are, um, that, that's a fair comment and we can certainly do that.

Henke Uh, Steve Henke, uh, Henke Development, 3524 Club Estates Drive, Carmel, uh, the only uses we want along 421 is for the equestrian. Uh, we want that as a buffer. We want that as a really neat entry area. We don't want any commercial there. The only reason we have any commercial associated with that is, probably because of boarding horses which could be interpreted, you know, it's commercial or agriculture. It could be that we want to build, you know, a really fantastic stables, that type of thing, there could be a wedding there or some event like that. We don't want to see any other, uh, businesses up and down 421. The same thing with, with the amenity center. Uh, there's currently a house there that we intend to turn into an amenity center. The lower level would be, uh, probably a small fitness area and, again, the upper level overlooks the lake – probably a little mini, uh, marina where somebody can come in with, with, uh, small electric pontoon boats. We don't want motorized vehicles, uh, on there. The question was asked last time, uh, whether there would be barns in the yards or in any of the, uh, uh, lots and the answer is no. Uh, what happens with that is one will put one type of barn, one puts another and all of a sudden it's out of control, there isn't enough, uh, grass to, to, uh, have the amount of horses, uh, that some might want so there would not be any, any there. The only commercial at all, as I said, would be if, and if anything is associated with the equestrian the, uh, and the only commercial in the, uh, uh, amenity center is for the residents. That is not, uh, public, uh, for the outside. That's probably on a, a 2 or 3, 2 or 3-acre parcel. The house – the large house, uh, there, uh, our probably our intention is to sell that house, uh, that is a possibility that there could also be some type of, of, uh, events, uh, at that house but other than the house, the two houses, uh, and the, uh, the barns for the equestrian, uh, there would be – we have no problem committing no other commercial.

Clutter If, if I could ask a question – and I think it's just a nomenclature term more than anything – so you'd be willing to commit that there will be retail commercial outside of the existing, the old original farmstead there whatever that's converted into you're not going to add any additional retail commercial space anywhere?

Henke No. No retail commercial space anywhere.

Clutter You'd be willing to –

Henke You know, we're doing, you know, \$3-4 million dollar homes here –

Clutter Sure, no I understand –

Henke And, and we're coming in and we're coming in with, with the entryways – we're creating that, that real entry – we, we this 35-40 acres, uh, on 421 is obviously expensive, viable ground but we see that as, as really an amenity to the whole development coming in –

- Clutter            Yeah – the problem is that the term development amenities is so broad it includes, you know, anything from trails to disc golf to a bar so, I mean, if, if we can narrow that down that there will be no freestanding retail commercial –
- Franz             Sorry.
- Clutter            Outside of the existing home that you spoke about that – I think that –
- Henke             I would agree to that.
- Clutter            Okay.
- Henke             Yeah.
- Jones             That gets back to my original concern because even what Mr. Henke said is that, you know, we could have a barn out there. Well that's fine but the barn could be used for weddings and the BZA spent two hours on that last week and that's the problem and that's what the problem with the package that we have in front of us – it's just not specified and it's not complete. Not complete enough for us to weigh in one way or the other and, once again, I am uncomfortable with putting that burden upon staff and other things in situations where it's not, a final plan is not being reviewed. And I don't think this is anything different than we said last time when this came before us. Correct?
- Franz             They've cut some of the uses out but that's, you know –
- Jones             But they haven't specified the –
- Franz             Yeah, no I agree.
- Jones             That's the point.
- Franz             Yep. When, when I look at this map – why, like way up in the northeast corner there's a little spot that says development amenities and then all of the open space is development amenities – is that, I mean why is it defined that way? Is that because of the trail? I mean, I'm just trying to understand what that is. Because, you know, in that little corner I don't know how big that is but, I mean, in theory you could put something in there –
- Price              Right.
- Franz             Without limitation as to what could go in there. So –
- Clutter            Yeah, I think that's the problem is that term is so broad like I mentioned – your definition it includes trails, commercial, equestrian, meeting spaces, private bars, fitness facilities, disc golf – just outdoor grill areas, equestrian trails, stables – it's, I mean, it's so broad that I, I think that's a big concern of the Commission.
- Price              No, I – and I hear that concern loud and clear and when, when we, uh, perhaps we thought we were being, uh, uh, clever in how we did it but when we met with

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staff to go over how better to classify the permitted uses this was the model we came up with was which was to have the single-family residential and then kind of an omnibus classification for development amenities but I see the point that, uh, the, the concept was not to cast each one of those uses all over the development where those amenity uses could be permitted but rather it was to – it was to limit, for example, the, the commercial use inside the meeting space to have open space but it would be truly open space, to have equine area that would be truly equine and we can certainly tie that back to, uh, the Concept Plan with precision. We have no issue to that whatsoever. We think that's where the value resides in the, in the proposal is that.

Franz Any other questions/comments? Would somebody like to make a motion?

Jones I think the motion I'd make is that we continue it.

Franz That would be to the May 17<sup>th</sup> special meeting.

Jones Can you work with staff and get this stuff resolved and then clean up and come back with some sort of plan that makes sense that we can get some sort of, uh, understanding of what the, the limits are to the different requests?

Price We, we certainly can. Yes.

Jones Okay. So I make a motion that we continue Docket, uh, 2022-0Z – 07-Z to the May –

Franz 17<sup>th</sup>.

Jones 17<sup>th</sup> meeting of the Plan Commission.

Franz Is there a second?

Lake Second.

Franz Further discussion? All in favor signify by aye.

All Aye.

Franz Opposed by nay.  
[No response]

See you May 17<sup>th</sup>. Thank you.

Price Mr. President, thank you.

Franz Next on the Docket is 2021-71-DP, Silverthorne Homes/Union Woodlands, 11281 and 11589 East 200 South, Zionsville, Petition for Development Plan Approval for the development of a 160.92± acre site to accommodate 179 single family residences with ponds, associated infrastructure, and a park in the Rural (R3) Rural Single Family and Two-Family Residential and Agricultural (AG) Zoning District. Is petitioner present?

Downey Good evening Plan Commission members, uh, my name is Sean Downey, Senior Director of Engineering with Silverthorne Homes, uh, office located at 9225 Harrison Park Court, Indianapolis, Indiana 46216. Um, also with me this evening is John Dabrowski, Project Engineer with American Structurepoint. Um, as President Franz introduced, uh, this project, uh, this is the same project that was before you last month, uh, that received a split vote, um, from that meeting with the input, um, Plan Commission members and some of the issues you had along with continuing to work with staff, um, we have made some revisions to our plans, uh, that hopefully will alleviate your concerns. Um, one of those critical pieces was that the detention ponds, um, we have revised all of our ponds so they are now all dry. We don't have any wet ponds, uh, proposed in the whole development. Um, another, um, issue last month had to do with the location of stop signs as it pertained to the waiver that was granted, uh, in regards to the driveway separation at intersections. Our now, our plans now reflect stop signs at all those locations, uh, those T-intersections, um, as you all requested. Um, there was also a gentleman, um, from Brookhaven had some concerns on buffering, um, in that area of Brookhaven. We have provided additional landscaping, um, along that property, uh, above and beyond the Town's, uh, landscaping requirements, uh, we've added a lot more evergreen trees in that area hopefully, uh, providing an even greater buffer, uh, than what we were required. Um, and then lastly, one of the, uh, comments or concerns had to do with the sanitary sewer. Um, in your packet is a letter from Wes Merkle, Engineer Manager with TriCo, um, basically communicating, um, their service territory and how it goes all the way to U.S. 421 and how their plans serve, would serve not only our project but the greater service territory west of us. Um, they continue to work with those residents along 1200, um, working with them to hopefully find a route and a resolution that they are comfortable with. Um, with that those are basically the major changes we've made, um, I know staff has issued their, uh, recommendation of approval in the report, um, and with that we'd open it up to any questions or comments.

Franz All right. Thank you. At this point in time is there anybody from the public that would like to comment on this matter? Please step forward. State your name and address.

Clemmer My name is Tyson Clemmer, I live at 11316 Still Creek Drive in Zionsville. Thank you for the time this evening to speak in opposition to the proposed development. Throughout numerous meetings and comments on the proposed development you have heard strong opposition from the Indianapolis Executive Airport who is here this evening, residents of Zionsville and members of our Town Council. The reasons for opposition include significant concerns about impact to resident safety, impact to the airport, impact to our schools, impact to traffic and impact to property values. While these are very real and valid, I can appreciate the limitations of the Plan Commission to control all of these factors and concerns but this evening I am going to speak specifically to the Development Plan Approval Findings of Fact Criteria that you use in the approval process for a development plan. I want to highlight two specific criteria of concern – the availability and coordination of utilities and the compatibility with surrounding land uses. As the petitioner noted regarding the availability and coordination of utilities, the information provided included the letter shown from

TriCo Regional, uh, Sewer Utility. The section highlighted in the red box speaks to the current situation around the potential expansion of utilities to this area. The letter states and I quote: “TriCo’s staff are presently working with legal counsel to acquire easements needed to construct this project.” I believe this would be identical to the position of the utility expansion when it was discussed in March. It is very important to note that there is very strong opposition to the currently proposed acquisition of easements by TriCo and I believe there’s another, uh, resident here this evening.

During the March Plan Commission meeting property owners in this area spoke to their opposition to the TriCo plans to expand utilities in the area through their property. In addition, the letter shown from a property owner in this area was included in the letters of interest and further notes opposition to the proposed TriCo plan. So, although TriCo is working with legal counsel, there is very strong opposition from property owners to what’s likely legal matters to be settled before a true plan can even be established for the extension of utilities to this area. So, regarding the specific Findings of Fact Criteria, there is not current availability of utilities for the proposed development and, additionally, there is not coordination or a clear plan for the utilities required for this development. Regarding the compatibility of the proposed development with surrounding land uses – all are very aware that there is a significant portion of the proposed development that is directly south of the Indianapolis Executive Airport runway. All guidance around land use compatibility near an airport is very clear and consistent. There are numerous U.S. Department of Transportation Federal Aviation Administration documents that provide extremely clear guidance on land use compatibility near airports and I will just reference a few. The FAA Airport Compliance Manual contains a section on compatible land use where it exquisitely states and I quote “The general rule on residential use of land on or near airport property is that it is incompatible with airport operations because of the impact of aircraft noise and, in some cases, for reasons of safety depending on the location of the property.” Another document is the FAA Land Use Compatibility and Airports document which specifically states and I quote “Residential development, particularly high-density development, is not compatible with airport operations due to aircraft noise impacts and for safety reasons.” These are publicly available documents from our Federal Aviation Administration, our nation’s expert on these topics.

The guidance and information is quite clear and definitive. Our airport’s Area Strategic Land Use Plan leverages this well-documented and historically consistent information around compatible land use around airports to provide guidance for the Zionsville Comprehensive Plan. This land use plan indicates how land directly south of the airport runway is not compatible with residential development. I think it is also very important to note that this is consistent with FAA land use compatibility documents that have been published well before the proposal for this development. Now that the proposed developer has reached the development planning stage, they must demonstrate that their development plan is compatible with surrounding land uses. There are some existing constraints like an area of the property where a crude oil pipeline passes through the property where they are properly avoiding residential construction but when overlaying the area directly south of the airport in the flight path that is incompatible with air traffic, again, based on very clear and consistent federal guidance, there are

residential homes proposed in this area. As proposed with homes in the area that is clearly not compatible with air traffic, the development plan is not compatible with surrounding land uses. Some have asked what about development further south of the runway? There are some very important facts to note. First, although there are other residential developments further south, no residential development has been approved by this or any other governing body that is as close to the runway as this proposed development. So, there is not some precedent where there is another development that has been approved that is closer to the runway. Further, there is no other property that is in closer proximity to the airport than the area of this proposed development. It is literally the closest property to the end of the airport runway.

It is important to note due to the location and proximity of the property to the end of the airport runway directly in the flight path, the federally published guidance that residential development near an airport property is incompatible with airport operations because of air traffic noise and safety would be the absolute strongest in this case. The concern about aircraft noise and safety is not a theoretical concern. I did want to provide a video just to share and help show how low planes are in this area. This video I'm about to share was taken over a neighbor's home in the Brookhaven neighborhood and chose a typical landing at the airport. I have this map to share some perspective. The blue areas indicate both the approximate location where the video was taken in the lower section in the Brookhaven neighborhood and also the end of the current runway at the top. The area that this video was taken is approximately 6,500 feet from the end of the existing runway. The red areas in the image show both the potential location of future homes in the proposed development, uh, towards the middle and the approximate length of the planned runway extensions. It is very important to note that the distance between the proposed home locations and the end of the planned runway extensions is significantly closer at only 3,000 feet. So why does this matter? The height or altitude of a plane on approach, on the approach path to land at the airport will be significantly lower than shown in the video due to these proposed homes being significantly closer to the end of the planned runway extension. Our neighbors today living under the flight path already feel like the planes are landing on their houses. Some have already sold their homes and have moved due to this, these concerns and the concerns about their safety. In the future, an aircraft landing at the airport flying over homes in the proposed development would be at half the altitude or height that you'll see in this video. I can't imagine someone trying to live in a home with planes flying that close and much more importantly, I can't imagine the safety risks in, introduced by building a home so close to the end of a runway. There would be no margin of error for pilots without potentially severe consequences. There are reasons that the FAA is very clear and consistent on their guidance around land use compatibility. Thank you.

Franz Thank you.

Borman My name is Teresa Borman. I currently live at 2714 –

Franz Uh, can you – into the mic please.

Borman Thank you very much. Um, my name is Teresa Borman. I live at 2714 South 1200 East in Zionsville. I've lived there for over 30 years. I'm here tonight speaking on behalf of myself and three neighbors that are directly impacted by the proposed development and we are all opposed to this development. Unfortunately, these neighbors, Bill Thompson, 2550 South 1200 East, Jason Henney, 2880 Stillwater Lane and John Luerssen, 2991 Stillwater Lane are unable to attend the meeting tonight. As I mentioned last month, during the time I've lived at this property, I have watched this area change from a very rural area with all farmland to a multi-subdivision area. I know growth is inevitable and to date I've never objected to development. However, I am opposing this subdivision. In order for this subdivision to occur, TriCo is pursuing eminent domain against my property to install a 12-inch main sewer line across my property to service this subdivision. The proposed route which is approximately 1,000 feet long and 30 feet wide will essentially cause me to lose half of the mature woods on my property. The woods are my buffer to the subdivision that used to be farmland to the west of me and provides both privacy and light and noise buffers and I didn't have a spiffy presentation but, you know, this is kind of document that shows, um, my property here. This is where they're putting the sewer line. These are my trees and they're going to take away about half of them. I had some other pictures if you want to see them. Um, there are other routes available such as along 1200 East but per TriCo, they are more costly since they would require deeper sewer placement. There actually was TriCo meeting minutes which I have a copy of from a few years ago that says this route will cost \$400,000 more so the decision was made to pursue the less costly route and to forth with condemning private property.

I do question their estimate since to date they have not offered any of us any compensation for easements which could alter the difference in cost. While it is true that TriCo met with the landowners as stated in the letter they submitted to the Plan Commission last week, during those meeting it was quite obvious to all of the affected homeowners that TriCo had already determined the route they wanted to take and not a single one of our concerns were address incorporated. I guess per the TriCo letter they must've all been impractical because they said they incorporated whatever was practical. For example, we discussed several other routes. They all deem impractical primarily due to, to the cost and I have a list of all the ones and why they said they couldn't do them. Okay? Primarily cost. Um, it was recommended at the last Plan Commission meeting that the developer assume the additional cost of one of, one of these more costly routes. What happened to that? There's been no, no discussion of that. Um, while, while we are opposed to any main sewer line being put on our properties, we did ask TriCo about boring line instead of trenching, um, and they said well that can't be done either even though they are, will trench under the creeks but they won't trench anyplace else. We were trying to save the woods. Um, we discussed putting the sewer on the west side of the creek which provides me more buffer and it remains on the east side. So, again, they did not incorporate any of the suggestions or concerns that we discussed during the onsite meeting. Okay? Um, I mean, I can show you pictures of some of the other possible routes and, again, not considered. This construction is projected to take six months and during that timeframe we will be subjected to a large amount of noise while they are destroying our woods and property and trenching a 10-foot deep trough that will settle over time and basically be a wide mud path, um, as well as having

strangers on our properties at all hours of the day and then we will be subjected to TriCo having the right to access our properties due to the easement whenever they want, again, being subjected to strangers on our private property forever.

All that while the Town of Zionsville expects us to continue to pay property taxes on that line, on that land. All of this just for the benefit of a developer. It should also be noted that Drees Home wanted to put a development on County Road 200 South approximately seven years ago and they approached TriCo about obtaining easements for sewer installation. Per TriCo meeting minutes at that time which I have a copy of here “The developer is again requesting the district consider using the condemnation process to gain the necessary easements. Since this is not a public health issue, the committee will not recommend this to the board.” I asked what has changed? This project is not for the greater good of the community such as a school, hospital, fire station – it’s for the good of the developer. Over and over again TriCo has shown that they just want to take the easiest, cheapest route and have stated they have no problem with condemning private property. Nowhere in the response from TriCo to the Plan Commission did they consider working with the developer to come up with alternative, more costly routes that do not require condemning private property.

Quite frankly, I don’t see how the Plan Commission can approve going forward with this development proj – plan and allow the development to start construction since they do not currently have adequate provisions for sewers for this development, even though their development plan says they do. On a different topic, while I understand the rationale for changing 35-acre wet retention pond to a dry retention pond, I now have additional concerns with the design. Basically, all storm water for this subdivision is now being drained from the dry pond 3 to the creek. This creek runs through the back of my property as well as the other landowners’ property. Per the drainage computation summary submitted from the developer with a 12-inch storm drain pipe from pond 3 during a 10-year rainfall event over 4,000 gallons per minute of drainage will flow through the creek in the back of my property. This release rate has increased by almost 20% from the initial submittal when it was a wet pond. During a 100-year rainfall there will be over 11,000 gallons per minute of drainage that will flow through along the week in the back of my property. The release rate has increased by 33%. I am concerned that the increase of flow will result in the creek eroding away the banks and, thus, more trees will be destroyed which I will be responsible for removing. It should be noted that the Boone County Drainage Board approved the previous plan with the wet pond on the morning of 03/21/2022 before the last meeting. I don’t see a record that they’ve approved the new plan with the dry pond.

In addition, I am very concerned with the quality of water that will now be in the creek. I understand there, there will be some debris filters installed in the pond, however, there is no mention regarding chemicals. This water will be comprised of subdivision road runoff with associated chemicals, yard runoff with associated chemicals and stated even a portion of County Road 200 South runoff with associated chemicals. With regards to the stated emergency flood routing which assumes that the storm sewer is completely clogged, it states that no adjacent homes are flooded by this development. What about the homes further south of the neighborhood along the creek? In specific, my neighbor’s home is fairly close

to the creek. If the creek overflowed because of the quantity of water being released from this development, will his home be flooded? It should be noted that several of the drawings are inconsistent with the size of the emergency spillway. I believe it's supposed to be 80 foot now. They originally was 900 feet and several of the documents still show 900 feet. Also, there is currently a stub row shown in the development plan for future development. How will this impact all of this drainage flood plans? Currently there are subdivisions already developed to the south of this development so I'm concerned that that additional drainage will be routed into the creek. We approve this I think we're going to have to approve the next one and I don't believe the creek can handle it. I believe between TriCo proposing to condemn my property for the main sewer line to service the subdivision and the proposed drainage emergency flooding plan, I will stand to lose the majority of the woods on my property with, again, no compensation being discussed to date from either TriCo or the developer.

In summary, I do not feel that developers should benefit at the expense of private individuals. I am asking the members of the Plan Commission to deny this application since the developer does not currently have adequate provisions for sewers. Deny this application until the developer and TriCo establish a route for sewer that does not require private property to be condemned. Again, this is not for the good, greater good of the public. Um, deny this application until the Boone County Drainage Board reviews the proposed dry pond concept. Deny this application until the plans are in place to ensure chemicals and debris are not released into the creek. Deny this application until it's determined the emergency flooding plans for this subdivision will not impact home and properties that are further south of this subdivision and specific along the creek path. Deny this application until it's understood how future development would impact the drainage flood plans or request that stub row just be removed. Thank you to all of the Plan Commission members. I appreciate your time and consideration on this matter.

Franz All right. Thank you. Is there anybody else who would like to comment?

Frye Good evening. I'm Bill Frye, uh, President of the Hamilton County Airport Authority representing Indianapolis Executive Airport which is at 11329 State Road 32. Um, I, I want to commend this gentleman – I, I didn't get your name sir but you couldn't have said it better than I can. I mean he had all the facts and, and really the issue here is, is noise and, and safety. I was glad to see that the developers had replaced the wet pond with a dry pond which has certainly, um, reduced some of the risk as far as bird strikes are concerned but there's still an issue that, you know, these houses as the gentleman pointed out are going to be much closer to the airport and there's going to be complaints, there's going to be noise, there's going to be very unhappy people that live there and, uh, for those reasons, I, I still – you know, as I said many times here before, these homes are incompatible with an airport and, you know, we've seen people in, in Brookhaven and, and Fieldstone who have lived there a while and have seen the airport grow and, and are getting more concerned about the noise. You move another set of houses closer to the airport they're going to be, as he said, the approach path is going to be a few hundred feet lower than it is now. So, that's all I gotta say. Thank you.

Franz All right. Thank you. Is there anybody else? Anybody online? Would you like to comment back to any of these points that were made?

Downey Thank you. Um, in regards to the first gentleman's, uh, presentation on the airport, um, I'm not an aeronautical engineer. I, I can't speak to, um, you know, some of the, the diagrams that he presented. Um, I can tell you, um, we, Silverthorne Homes, we want to be in Zionsville. Um, we have people who have done the research, um, you know, looked at marketing studies to determine, you know, what proximity of this development as it relates to the airport. We wouldn't be moving forward with this if we didn't feel homes would sell and there would be a buyer for this project. Um, in our covenants we've added a number of criteria, um, that outlines everything that will be part of that home and the understanding to those future homeowners as to what's sound, um, noise, frequency of flights, those types of things, um, and, you know, I certainly – seeing that video I recognize, you know, that we are close to the airport but we as a developer would not be moving forward if we didn't think we could sell these homes. Um, in regards to Mrs. Borman, um, TriCo has really been leading us as far as the ability to get sewer to this project, um, as I alluded, this isn't sewer just for Silverthorne Homes. It's for their future growth to the west, to U.S. 421 and that service territory. Um, I, I, I do sympathize with, you know, what she's been experiencing as far as the communication. Um, you know, we're, we're willing to have a conversation with TriCo to help alleviate some of their concerns.

At the end of the day, they're the utility provider for this area and we're basically relying on them to make the best judgment on how they plan to provide sewer for this area. Um, regarding Mrs. Borman's comments on drainage, um, we've gone through an extensive review with both George Lewis, the town engineer, as well as the outside consultant, um, and we've met all the criteria as far as release rates for the ponds, um, I can't speak to the specific numbers without going back through that drainage report but we, we aren't discharging greater rates than what's currently coming to that tributary. Um, I do know there is 160 some acres in the airport that comes under County Road 200, um, and we'll be, um, basically improving that culvert and allowing that to continue on downstream so there is a vast majority of drainage that isn't even specific to ours that already contributes to that creek and tributary, um, but I can tell you everything on our site that we're developing we're restricting it and we're adhering to the Town's ordinances for drainage in that regard. Um, as far as some of the, uh, comments as far as the quality of that water, dry detention actually is a better means of treating the storm water than even a wet pond. Um, that water is going to flow across the ground and percolate into it so we're actually providing a greater level of water quality now with these dry detention ponds. Um, as far as her comment, um, the County isn't – they reviewed the legal drains for this property. The Town actually reviews all the onsite drainage. So in reference to the County Drainage Board being – their approval is only for the parts that impact their legal drains. Um, I think that kind of touches on some of the concerns and comments from them so.

Franz All right. Thank you. Roger you – Wayne? Staff report please.

DeLong Thank you and I, I think for the sake of being succinct, we will focus for now specifically on the Findings. Uh, as, as indicated by all the interested parties here, uh, Finding #1 and Finding #2 -- #1 focused on the compatibility and 2 focused

on the availability of and coordination of sanitary sewer are both items that have been touched upon several occasions in this conversation this evening. Certainly compatibility – you have commitments that were executed related to the rezoning of this property which spoke to the, um, activity of an airport in proximity to this property. So to go down a path of this is somehow new information that an airport is next door to this property is not correct but certainly for the purposes of the Plan Commission, that topic should be that it more closely by your counsel, uh, there's topics, again, getting to the, the idea of the commitments from 2006 already acknowledge, uh, the operations of an airport. Specifically to the development plan process and availability and coordination of sanitary sewer, this may have a bit more leeway. Uh, the Plan Commission in the past has definitely accepted letters, availability letters, as indication that sewer, whatever the utility may be, is being worked on, is available. Certainly the information tonight indicates that the project is moving forward, has sanitary sewer – at least is working through it. Condemnation, of course, is the ultimate tool to make that happen so to speak. Certainly this Plan Commission can vet that information and determine if the discussions tonight and the letter that you have received, uh, rise to the level of demonstrating the coordination of sanitary sewer. Given that these actions in the past have been your standard, if you will, uh, the staff is poised with a recommendation of support subject to the final, uh, finalization of the outstanding issues but certainly if there's any new information that counsel can provide to you on these two Findings, happy to, uh, stand for that and hear that information.

- Franz All right. Thank you Wayne. At this point in time I'll open it up to any members of the Plan Commission with questions/comments.
- Jones Uh, one question – the land to the west of this between, uh, this development and 421 – do we know what that's currently zoned?
- DeLong Ag. Well, I believe it's ag. We'll double check but –
- Lake I think it is because it goes all the way to Hopwood and I think Hopwood is ag. But it's also at some point we should 1:18:33.
- Jones I guess my point is is that we're creating a funny trick bag of that their justification for the line and the routing is to both serve this subdivision as well as future development to the west, if I'm hearing correctly, but the land to the west is currently zoned agricultural and, given its proximity to some other previously existing things – and I think we actually had a group that came through wanting to rezone some of that and we turned that down. So, the combination of, uh, um, one of the, you know, issues that keeps seeming to circulate is, is who came first? Um, you know, the, the approval of this land to be residential by Boone County in 2006 kind of predated the airport's, um, statement of the amount of expansion they were going to do. It's kind of interesting but given the months, if not years, that we've been hearing this, this, uh, discussion cycle, that map was the first time that anybody, I think, actually shown the tip of the runway – tip of the expanded runway in proximity to the potential future development. Um, and that's where I think, you know, the, the first Finding starts to hit home is that is this development compatible with the surrounding land and we've discussed the issue about it being compatible with

the airport but now we also need to discuss is it really compatible with the land to the west? Because we're, we're working ourselves into the trick bag of that previously we have turned down residential rezoning for that land to the west but now by enabling a, uh, sewer extension to reach it, it puts further pressure for us then to, uh, change our previous – in other words we're – I guess the only way I can think of it is we're working against ourselves. Um, and the second issue I, I want to just clarify a little bit is, uh, once again, not an engineer, but stayed in a Holiday Inn last night but typically when I'm used to working around retention ponds, um, their function is to have an outflow that's set up a little bit higher than the normal elevation of the water but over time that water settles, sinks, dissipates and so part of the purpose of a retention pond is to slow down that initial flow so that when we have a heavy rain it builds up in there. You know the pipe is usually sized to limit the release and so there's a fluctuation. I guess my concern is with the detention pond maybe they've not changed the outflow but what they have done is done away with that ability to, uh, decrease the initial flow coming off the property and, and so it's kind of concerning because to what, uh, the adjoining property owner spoke is that, you know, once again it's, it while it may numerically work out, is it, uh, in practicality working out? Is the dry detention pond really serving what it was supposed to do which is one of the features is to predict, to prevent that initial heavy shot from all areas hitting the creek at the same time, hence, hitting – I don't know if this one flows to Lions Park – but, you know, for a long time Lions Park sort of served as that little stop gap before it moved its way south. Maybe that, I think that's been changed here recently but, anyways, back to the, the original point is I think we're coming short of, of, you know, Findings of Fact #1 there. Is it compatible with the surrounding land and I don't think it is.

Franz I think relative to that the issue we have is it's currently zoned residential.

Grabianowski Uh huh.

Franz And they've got commitments from 2006 that require them to notice the homeowners, etc. the, of the airport, the noise, those sorts of things. I, I, you know, it's zoned residential that's the problem we face. I mean, at this point in time you guys asked them to get rid of wet ponds and they put dry retention in there. Um, you know, they do have some waiver requests but, you know, arguably these are waiver requests that we've granted how many other times? I mean, I, I just think whether we like it or not we're kind of, I think we're potentially boxed in here on how we can deal with this.

Lake I thing that gets me is this is simply not a good idea and I don't know how many times you guys have to hear it before you realize this is not a good idea. Just because you can sell a home there doesn't mean you should sell a home there because you're going to sell it for \$400,00 or whatever and the homeowners are going to hate it and they're going to – the value of the land is going to go down so they're going to sell it for \$350,000 then somebody's going to buy it again for \$300,000 and it's going to just become a just a trashy neighborhood where nobody wants to live or the people that live there are there because they can say they're in Zionsville but couldn't get a home anywhere else but they'll be miserable because these planes, I mean, that noise is going to be twice as loud and those planes twice as low when they're extended over, when that runway is

extended. They're going to be coming right over your residents and they're going to buy that house and six months later they're going to look in the mirror and say why the hell did I buy this house? This was a really stupid idea. And, I know you can make money off of it and good for you but should you make money off of it? Is this the right, is this the right place for residential development and the answer is no. And the challenge we run into is somebody other than us zoned it residential before this airport runway study was in place, um, and adopted so you kind of beat the buzzer if you will for the exclusion zone, um, but there's no way your construction is going to get the decibel level down in that house to an acceptable level even to HUD standards. No way. No how. Not going to happen. So you're going to have 90-100 decibels of a plane flying over that house 40, 50, 60 times a day? I mean is that really the environment that we want to create for residents? Period. That you guys want to create? I mean, do you want people five years from now going around saying man, Silverthorne, what the hell were they thinking doing this, this neighborhood right underneath, you know, the runway? Uh, and I will comment to Mr. Frye – I'm on BZA as well and I was very disappointed that one of your board members spoke up at the last BZA meeting and said I'm not for the petitioner that wants to build a house in the runway exclusion zone but I'm also not against it. So the airport and everybody associated with the airport needs to figure out what, what camp they're in relative to this because it hurts us and we're trying to back the airport relative to building houses in there and then we have the president of the board saying oh well, we really don't care if this person builds a house there. Um, that puts us in a tough spot so you might talk with your, your folks relative to that. Um, but yeah, I just, I don't know how anybody can think this is a – just because, just because you can doesn't make it a good idea. And yes you're right we may be forced into approving this and it's going to suck. It's going to suck for the residents, it sucks for Zionsville and in five years it's going to suck for Silverthorne. And it's a shame.

Franz One of the questions I would have related to this is, I mean, you got 179 homes here, I mean, if, if the additional cost of modifying the TriCo sewer line is \$400,000 that's a couple thousand a lot. I mean, if you feel like Zionsville is a attractive location \$2,000-3,000 a lot is not going to make a difference in people buying these things. Is there anyway you would commit to working with TriCo to pay for the sewer line to not disrupt people's backyard, or people's property?

Downey I, I would say President Franz we definitely would work with them and see about that alternative. I mean, hearing the residents' concerns and you all as a Plan Commission, your concerns, yes we would re-engage TriCo in looking at that alternative route.

Franz I mean I'd like to minimize the impact on your neighbors. I mean, we potentially can't do anything about the property that you want to develop but hopefully we can minimize the impact on them. Um, relative to the dry retention pond I guess I would, I'm going to have to trust the Town engineers that is acceptable flow. It's not going to create any problems downstream, um, that's part of their job, that's part of what they, you know, advise us on, advise the Planning Department on. So, I'm, I'm okay with that. You know it's interesting when you see this map of the, the airport fly zone and the restricted area, it stops right at this property line. In reality, if, if you had your way it would extend well beyond this property line

to 10,000 feet. I mean, it's only stopping there because there is already development there. So, I mean, it's kind of, I'd say it's misleading that it just stops right there. I think if, if they had their way it would extend much further.

Lake Oh yeah.

Franz And, so –

Lake Which makes it even more frustrating this being done in this zone.

Franz I mean I agree – I, I, I think this is not a good, I mean, it's zoned for it. It's not a good use for this property but, uh –

Jones You know, the question is it's zoned for it but is it – it's zoned for up to the density that they've proposed but they can always do a lesser dense project. They could do 2-acre lots and put, you know, go back to doing septic fields.

Franz What is this, what's this zoned? R2?

DeLong R3.

Franz R3. I mean, you know, when we requested the down zone it obviously –

Jones I know.

Franz The mistiming of that, um, it's not a good situation all around. Relative to working with TriCo to get this thing done in a, in an alternate route so we don't condemn people's property – I'm not, I've never worked with, with a utility sewer – Wayne, what is the chances if you went to them and said we're willing to pay for the delta of this cost that they would work them to move it along a current right-of-way, public, you know, some sort of easement that's already granted? I mean, is that – I mean, we can't even guarantee that that would happen, correct?

Clutter Well, you, you can't. A lot of this is county roads or that at least the County maintains under the agreement and most of it, I believe, is assumed right of way, at least along 1200 and that means that TriCo would have to obtain an easement for it. The County, I guarantee you the County will not allow it to be run under pavement. So it's going to have to be run in the assumed right of way which is usually – I mean depending upon the topography, 10-12 feet off the, the edge of the pavement so they're going to have to acquire an easement for that but since it's already in right of way, I mean, typically that's not an expensive easement. People don't think that, you know, they own up to the, the edge of the pavement typically. That being said, I don't know what the difference in the distance is but as opposed to cutting through the backyards versus running, running it down 1200 and up 200, I, I just don't know that but I would think the utility would say we'll do it if you're committing to paying the delta and but figuring out what that delta is is going to take some time.

Franz Yeah.

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- Grabianowski There's a farm field in the middle of 1200 that, that there are no houses and it goes over to where that property is.
- Clutter Okay.
- Lake Yeah, there are a couple of houses along 1200 that are pretty close to the road.
- Grabianowski Yeah.
- Lake Unfortunately. There are two, two that I'm seeing. Most of them are, are set back.
- Clutter Well and I, I don't know they, they may be able to run on the other side. I, I don't know. There may be options around that but I know the County isn't going to permit going under the road.
- Jones To the, um, would you come back up and bring your map, please.
- Franz While she's doing that. I got a question that, you know, the public good – can you define that? I mean, the, the utilities generally have a pretty broad leeway in that definition. Is that a fair statement?
- Clutter They, they do. And in the extension of water and sewer, even if it's to one particular area, um, is generally determined to be your public good benefit. Um, and, and by TriCo's and some others' admissions, it's not just this neighborhood but other future developments and neighborhoods and –
- Lake Well and too – there's also their admission though it's not for the public good.
- Clutter Well –
- Lake Per their own meeting minutes.
- Clutter Oh for TriCo's?
- Lake Yeah, for TriCo meeting minutes.
- Clutter Yeah, yeah. Understood. But generally speaking, you know, there's, there's been a big push with IDEM for years and years to get rid of septic and this is all part of that. The more, the more they can serve residences, whoever with sewer lines as opposed to having them on septic the better and so that's always considered to be a public utility, public benefit.
- DeLong We definitely need to be capturing whatever Mr. Jones is conversing about.
- Franz Yeah. Hey, Larry – you've gotta. If you, if you want to go up there and kind of comment on what he was – what you were showing him.
- Borman Okay.
- Jones All right.

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- Franz For clarification so it gets on the record.
- Jones Public record.
- Borman So for clarification, um, TriCo is –
- Jones Name and – I'm sorry.
- Borman Proposing starting at 146<sup>th</sup> Street.
- Franz Can you repeat your name and address.
- Borman Okay. I'm sorry. Teresa Borman, 2714 South 1200 East. Um, TriCo is proposing starting at 146<sup>th</sup> Street in the Stillwater subdivision, cutting across three properties in that subdivision and then cutting across mine, cutting across Bill Thompson's and ending at the southeast corner of the development. Um, they could just as easily go down 1200 East and at the back side of Bill Thompson's property there's a cornfield that I believe that individual – I could be wrong, I don't want to speak out of turn – um, the pipe sewer could go through there and then to again to the southeast corner of the subdivision.
- Franz All right. Thank you.
- Madrick Wayne, do we – is it accurate that if they do condemn however many acres of these peoples' property and take all the trees away they still are responsible for taxes for that entire piece of property?
- Clutter That's correct. If they're, well if they're only taking it for an easement which is what they would be doing.
- Madrick But they don't have to compensate them?
- Clutter Oh yeah. They can compensate them. So yeah, yeah – they certainly have to compensate them but as long as the person owns the underlying property – they still own the property TriCo would just condemn for an easement which gives them the right to install the pipe and maintain it if, if ever they needed to.
- Lake But the neighbor can't go back and plant trees, they can't –
- Clutter Oh, you, you can – you can –
- Borman **Inaudible off microphone 1:36:23**
- Clutter Not in the easement area but I'm talking about if you can plant trees around it.
- Borman **Inaudible off microphone 1:36:29**
- Lake But not in the easement you can't –
- Clutter Not, not over the exact, yeah, correct.

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- Franz And then, if they condemn them, the compensation would it be – it looks like this, if it's all zoned ag they're going to be compensated as farmland. Correct?
- Clutter That's always negotiable. You, you have to appraise it, you know, there's the fair market value of what land goes for out there – whether it's zoned ag. It's, it's the use they look at and not the zoning.
- Franz All right. You know, I, I hate to continue this again, however, I would like to propose that we give you guys a month to sit down with TriCo to discuss alternative routing of this sewer, try to get them to agree of a route and you guys would agree to pick up the delta of the cost so if this is a failed subdivision at least we don't impact their yards, their properties. Is that, is that something you'd be willing to do?
- Downey Yeah, yeah, yeah.
- Franz All right, with that, uh, another continuation to the special meeting.
- Jones Okay. I'll make a motion. I guess this is my speciality tonight. I move that Docket Number 2021-71-DP, Development Plan Petition for the development of 160.92 acre site, uh, to be continued to the May –
- Grabianowski 17<sup>th</sup>.
- Jones 17<sup>th</sup> –
- Lake 17<sup>th</sup>.
- Franz 17<sup>th</sup>.
- Jones Um, Plan Commission meeting.
- Franz Is there a second?
- Walker Second.
- Franz Any further discussion? All in favor signify by aye.
- All Aye.
- Franz Opposed by nay.  
[No response]
- Motion carries. We'll see you next month. Thank you.
- Downey Thank you.
- Clutter This is yours Ms. Borman.

Indistinct conversations 1:38:32 to 1:39:32

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Franz            You know what, since it's coming back next month –

Borman        I'll be here.

Franz            Just if you could email this stuff.

Borman        I will.

Franz            So we can get copies of it.

Walker        Yeah.

Clutter        Yeah.

Borman        I did some of it but not the shots that are on the list.

Franz            Okay. Thanks very much.

Clutter        Thank you ma'am.

Franz            All right. Next item on the docket is 2022-05-DP, Seake, LLC/Parking Area, 151 Express Lane, Zionsville, um, Petition for Development Plan Approval of a parking area on a 1.06± acre site in the Urban (B-2) General Business Zoning District. I'm assuming the petitioner is online?

Grabianowski No.

Franz            This was Mike Andreoli.

Clutter        Chris Zoeller was here last time.

Franz            No it was Andreoli.

Clutter        It was Chris Zoeller, I think. Maybe it was – oh, you're right –

Franz            Is someone online?

**Inaudible off microphone 1:40:33**

Lake            Andy Swanson is a civil engineer with JPS.

Kilmer        Mr. Andreoli is also the counsel.

Clutter        Andreoli –

Kilmer        Who I was anticipating was going to be here this evening.

Clutter        Chris Zoeller was the project manager –

**Inaudible off microphone 1:40:51**

Clutter Mike Zoeller, Mike Zoeller, I'm sorry, not Chris. Mike Zoeller's on?

?? Yes.

Clutter Okay, yeah.

Inaudible of microphone 1:41:12

Franz Yeah, I mean –

Clutter He, he is the project manager for it I believe.

Franz Okay then –

Lake Andy Swanson is also the civil engineer so he's on –

Clutter Oh Andy – okay.

Franz All right. Well promote one of them and ask them who wants to speak.

Inaudible off microphone 1:41:47

Franz Uh, uh, can you hear us or can you say something so we can hear you? Is there a dial-in number to the Zoom meeting?

Inaudible off microphone 1:42:38

Franz I'm wondering if we can give him – if he can hear us you could dial, uh, you could dial in at 1-312-626-6799 and I think you'd be able to join via phone conference call.

Lake Well and if Andy Swanson is on there I know he's a fan of public speaking personally so you might promote him.

Inaudible off microphone 1:43:20

Lake He dropped off?

Inaudible off microphone 1:43:26

Lake Oh.

Inaudible off microphone 1:43:31

Walker There he is.

Franz There we go. After two years the kinks still exist.

Garn Would it help if I answered questions? I'm not sure I'm the technical person to  
1:43:52.

- Clutter I don't know that it's technical in nature as it – who's doing it?
- Franz Well, why don't you come up and, and state your name, address and, um –
- Garn I am Nicholas Garn. I live at 3607 Mossy Rock Drive in Zionsville here.
- Franz All right. While we're working to see if we can get this person connected, Roger do you have a staff report on this?
- Kilmer Yes sir.
- Franz All right. Let's go through that.
- Kilmer Very good. Um, this project was, uh, again, they are seeking a development plan approval for, uh, a 33-space parking area on a 1.06 acre site within the, uh, B-2 district. Uh, the location of the property is, is truly next door to Town Hall. Uh, this petition received its initial public hearing at the March 21<sup>st</sup>, uh, Plan Commission meeting and was continued to tonight's meeting. No variances have been identified or requested for the proposed development. Uh, so now I'll kind of focus on any changes that have occurred since the, the project was presented at the last meeting. Um, some items have been addressed but the two primary topics of concern have not received any significant attention as, as yet. Those two items being first of all, the owner's consent, adjacent owner's consent, uh, meaning that of, uh, the property owned by the, the Town or Town entities. Uh, there is still discussion between the petitioner's counsel and the Town's counsel, uh, but an agreement has not yet been reached. So, technically, we as, as an involved party have not given consent for this petition yet. Um, the second item of concern, uh, deals with drainage of the property. Um, a drainage report nor an O&M manual have been provided for staff to review. These items have been requested since the project was initially filed and, and the original, uh, comment letter from TAC was provided to the petitioner and these items were noted on there and they still have not been, uh, provided so stormwater and our Town engineers have not been able to complete their review of the proposed development. Uh, because of these two significant items, drainage and additional – adjacent homeowner consents, staff is recommending the project be continued for one more month.
- Franz All right. Thank you. Do we have them online yet?
- Inaudible off microphone 1:46:28
- Franz All right. I don't know if you are either, it sounds like.
- Garn I certainly wouldn't be able to speak to any of the, um, technical details. I'm sure engineering will be – we obviously want to make sure the engineering is up to standards for the Town and, uh, meets, any needs that the, the Town, obviously, engineers would have. In regards to the easements, communication with, um, the Town administration and, and their concerns – honestly I'm not sure I understand any of their concerns at this point in time. Um, as you can, may have been around the area, um, in the last really mostly since the Town, um, Hall has increased their staffing and is now back full time in the Town, parking in our integrated

center has become taxed. I don't think anybody whose been around Town in the afternoon would disagree to that. Um, and the reality is Seake seeing this, um, initially reached out to Town Council, the administration, um, and requested consideration of purchasing the lot, um, there was even a brief discussion about going in together to create a larger integrated center concept that was, um, through rough communication basically denied as not a viable opportunity the Town wanted to pursue at that time. There was some discussion about looking at potentially adding some extra parking in lot, which one is that, Lot C, the one up near Oak Street, um, Seake was willing to pay 100% of the cost to put some parking in on the north side of that with the caveat that we would have opportunity for first right of refusal if the town ever decided to sell the land. That was also denied as a viable option. So, Seake then decided to – in order to try to eliminate some of the parking concerns that we see happening, um, in the Town integrated center area to purchase the land on our own and then hopefully work to develop extra parking. The goal is to relieve roughly 33 spots out of the integrated center and allow that now to be available for the public and for Town employees and move more of our people to that parking lot. Um, the idea was, we thought a very positive concept but we've been met with some resistance we weren't expecting so.

Franz So, Roger, when you say, uh, the Town's access in improvements are you really like talking a curb cut to get through there and, and, and – what exactly are you talking?

Kilmer Uh, I appreciate this question because it reminds me there's one, there is one change that has been made to the project. I, I did not include on the previous proposals they were showing a gate, uh, that was going to, um, well provide security for access into that parking lot and the location of that gate was technically on the Town's property. That gate has been removed so it is, it is no longer on the Town's property. Um, and now I'm sorry I'm drawing a blank on, on –

Franz I, I was just saying it says there needs to be improvements made so I'm assuming it's just creating an access into that lot from the city's or from the Town's lot.

Garn Integrated lot, yeah. We, the, the easement is 50% our property, 50% the Town's property. So it's completely 50/50.

Kilmer To refresh the, the presentation from last month, for someone to drive from Oak Street into the proposed parking lot, their route will take them across easements through the integrated center of Town Hall and those easements half of it is owned by the Town and half of it is owned by, by Seake and, and, uh, we're just wanting to make sure that the, the appropriate rights to do that have been granted by the property owners.

Franz All right, so –

Jones Whose court is that ball in? Is it the Town's? Or is it?

Kilmer A, uh, there has been dialogue back and forth between the two counsels –

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- Jones Okay.
- Kilmer The most recent was a letter from Mr. Andreoli to, um, Ms. Noonning, uh, dated April 11<sup>th</sup>, um, I am not aware of any response to that letter yet. Again, it was from And, Mr. Andreoli to Ms. Noonning.
- Garn The discussion most recently from my understanding has served a little bit around the Town's access and use of the property and the parking lot. Um, obviously, we proposed to the Town to go in together to make this a joint project, uh, um, joint cost sharing. Um, that was denied. Um, so for us to open up – the project is probably going to run \$700,000+ for us to open up this cost to be 100% for ours and the Town to have full access to it whenever they want seems a little unreasonable but we offered, um, most recently to large events, voting days, to certainly make it open. Another reason taking the gate out, uh, was a consideration for us to kind of make it a little bit more available as needed but we're, we're – we've been considering putting two electric vehicle charging stations in the facility, um, to primarily allow some of our newer staff members and me included to charge our electric cars, um, as needed, um, so that was the other reason if we, if we didn't gate it initially we could make those, uh, charging stations much more simple. If we leave the gate up we now have to deal with access to the electric vehicle stations, so our electricity 1:51:56 don't end up crazy and people don't park there all day long.
- Franz All right. Well, it doesn't look like we've got the people here that is necessary to move this thing forward so, um, I would entertain a motion to continue this per the staff's recommendation to the May 17<sup>th</sup> special meeting.
- Jones I gotta, I got a question –
- Lake I got a statement too. Go ahead.
- Jones Okay.
- Franz Go ahead.
- Jones All right, talking quick. It sounds like this is a classic issue of the Town of Zionsville entered into an agreement to, uh, sell a portion of this overall development to a private group which they have then developed a building with the general understanding there'd be some shared of, uh, common area maintenance costs. And it sounds like it doesn't really get particularly well vetted on the front end. Now we have an individual who needs additional parking and they're willing to bear the cost to both buy the land and develop it but they want to have first right of it and I would love nothing better to do than to pass half a motion to approve the parking lot subject to getting the drainage to Roger because if the Town is dragging their heels in getting this done it is on the Town's – it is a Town issue. The Town needs to get off their collective Town tuchus and address it.
- Franz All right.
- Jones Because, I mean, if you're, if you're going to make these, you know –

Lake                    Yeah, I, I – that was going to be my comment as you – in my mind you don't have the right to decide you don't want to go in on it and then somebody does it on their own then decide you don't want to allow them to do it. So, if he's bearing all the costs then he has every right to do it and we need to suck it up and just let him do it and that's really frustrating that we would put him in this position to spend the money, the dollars, the attorney's fees to try and negotiate something that the Town had a chance to be a part of in the first place and said yeah we don't want to. So, okay, you didn't want to do it then, then don't do it now.

Franz                    Okay.

Lake                    It should be his deal, let him do it and move on. But I do agree with the, the right to be able to go through the drainage review and that is certainly necessary.

Franz                    No that's fine and there was nobody, nobody moved anything so, we're, we're fine. So, all right. So with that we'll entertain a motion – make sure you have the right conditions and all that stuff. So one of you guys –

DeLong                But before we jump in, Roger, have you passed out the letter from April 11<sup>th</sup>?

Kilmer                 Yes it was included in the package.

DeLong                Does it speak to, does it speak to any concerns with what's been said?

Kilmer                 The letter, April 11<sup>th</sup> letter that I referenced is provided in the staff report as Exhibit #7.

DeLong                I mean, as discussed, at the previous meeting, the issue as I understood it was the lack of any financial responsibility for the maintenance of the easement and the intensification of the easement and this is what the administration wanted to work through. And somehow it's been reduced to cost of trash within the dumpster.

Lake                    Yeah.

DeLong                So, I, I think the issues are a bit broader than what's been described here and certainly a continuance – I mean, I'd be very hesitant to see an approval subject to drainage when there's –

Garn                    Can, can I address that maybe to some from a perspective, um, the if I'm not mistaken and, and Wayne and the Town certainly would know the details on this, certainly better than I would but the PUD for this environment, um, both the Town of Zionsville's Town Hall and the Seake building had to, had to seek variances on the number of parking spots required per square foot of the building. So unless I'm missing something, both entities got that approved on the front end. The vision for the integrated center was to share resources, um, when we proposed a dumpster concept, uh, when we built the building the administration at the time said that's silly, there's no reason for that, you spent a lot of money on a dumpster concept, we don't want a bunch of dumpsters that are already on our piece of property, um, it's ridiculous, um, I remember the former Mayor

specifically stating if we've gotta call Ray's and have them pick up the trash twice a week we'll call Ray's and have them pick up the trash twice a week. It shouldn't be a big deal. This isn't, this isn't a reason to build another dumpster. Um, but we, we went through the traffic studies. Um, our building has not added any square footage at all so the amount of flow that was expected through the easement, um, what was expected at the time we built the building has not changed, um, and so for the Town now to come back and say well you're increasing the use, not beyond what was originally approved and not beyond what was originally agreed upon in the shared agreement.

DeLong           And an additional point is that as we, Mr. Burrus provided this Plan Commission counsel during representation of his own matter, he spoke to how parties of an easement need to consent to utilization of that easement. You have the Redevelopment Commission that has not consented to the use of the easement, you have the Town, uh, Building Corporation which has not consented to the use of the easement. So, the, the filing itself lacks consent from the parties that are with control of the easement. Unless that instruction in that testimony that was given to you a few months back was incorrect and that's immaterial, then, then a motion seems something you could do but I'd certainly turn to legal counsel here. I mean the file lacks consent of two parties of three that have control with these easements.

Garn               But, but the reality is, the easement isn't being utilized for anything to enter the integrated center. If we never built the parking lot the same 33 cars are still going to be using the exact same easement they were before. There's no change on the number of cars that will be utilized by Seake on the current approved easement. The only change would be if 35 more employees from the Town or 35 more patrons who show up to vote use the easement.

Lake               You could argue that the Town has increased their capacity in the building and did the Town request, uh –

Garn               No.

Lake               Consent –

Garn               Zero.

Lake               When the Town increased their capacity?

Garn               Nope. Not a single word. Not a single request.

Lake               I just think that we need, we need some people with the, these parties of the Town to step up to the plate and get this thing figured out. Because it's not fair to penalize this, this property owner who owns that property to ask the city to go in with them on it to now be held up because the city doesn't want to commit to this. And, Wayne, I don't know how we get those groups to do that but I, I'm sitting here pretty disappointed that it's to this point that, that, you know, he's bought the land, he's done the engineering, he asked Zionsville to participate in it, Zionsville said no and yet Zionsville's not giving the consent needed to allow us to move this issue forward.

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- Franz So the easements are not just to get in and out of that parking lot – it's, it's all through the parking lot, correct?
- DeLong Correct.
- Franz So, I mean, how can you have, how can you own half of the easement? I mean, you know, I mean –
- Clutter You don't.
- Franz So, I mean, doesn't by nature an easement grant you the right to use even if it's a joint easement?
- Clutter Yes. It grants both parties or however many parties there are to the easement the right to utilize the entire easement area.
- Jones Yeah. You know, is it, well is it actually, half an easement or it is better described as the primary drive that comes in off of Oak runs down the property line of which half is on the Seake property and half is on the Town property.
- Clutter That's correct. It's, but it's joint and several use.
- Jones Yeah.
- Clutter It's kind of like being husband and wife.
- Jones Right.
- Franz We're sure not getting along really good.
- Jones I was going say I think I'm the president of the Building Corporation so I could actually –
- Clutter There you go.
- Franz And then you, Wayne, you talked about a third consent. Which one is that? So you have the Town –
- Clutter Redevelopment.
- DeLong Yeah, so the Redevelopment Commission owns the lot.
- Garn The problem is that, is that our shared agreement doesn't include anybody who's not – it only actually includes the Town. It doesn't include the empty property that doesn't have ownership, doesn't have anybody on it. The way, the way the agreement is written it actually includes the two parties.
- DeLong And the agreement was signed by Wade Achenbach who was then the president of the Redevelopment Commission. So, there's an example of the intricacy.

- Lake So legally how do we move this forward? What's our, our wisdom from the, uh, center open here or whatever you want to call this thing.
- Clutter Well, I tend to agree that consent from all of the parties to the easement – it's, I, I don't believe it's a legal requirement to moving forward with the petition but it's the legal requirement for getting access to the property which doesn't make any difference of granting the petition if they're not – oh I'm sorry, I'm sorry. When you're talking about consent for a petition – the right to file a petition you're talking about if this is your piece of property whoever the owner of that is has to consent to it or if they've got a purchase agreement for it or whatever the case may be. The easement's over here they don't have to consent necessarily unless they're property is impacted which is one of the questions I have is are any of the structures contemplated from this parking lot going on to that easement property? Well, yeah – drives, curbs, things like that. So in that case, anything any improvements on this property that touches that easement property everybody has to consent. All, all of them do. Now to the extent that it increases the intensity or use of the easement, I don't know that that's been established either way. I don't think Seake has certainly increased the number of employees there or anything like that. The Town has – maybe they have, maybe they haven't then the question is is whether or not that was contemplated by the original easement document. Probably. I mean everybody thought that at some point in time this building was going to be fully occupied with people and there are going to be people coming and going, um, but the hard part is, is like Larry said that sides aren't talking too well right now and how to get that to happen, well, I mean I can try and arrange a meeting with Amy and Mike and get them in a room together and see if that gets us anywhere. But they both answer to clients and their clients have to be willing to take the same actions.
- Franz I'm kind of surprised Mr. Andreoli is not present. Um, you know, unless he assumed it was a foregone conclusion it was going to get, be continued.
- Clutter Probably.
- Franz Um, but –
- Clutter I mean, if you want, I mean I can try and get Mike and Amy together and have a meeting and see if from a legal standpoint it seems as that certainly Seake is being punished and to a certain extent the Town is being punished for whatever reason basically just because and I don't know if it's the lawyers aren't communicating well or they're not getting the direction they need from their clients or what the case is there.
- Jones Are you under any time constraint to get this done?
- Garn No. Our initial goal was to try to get it done before tax season for the, you know, because that tends to be a pretty big high traffic time.
- Jones Okay.
- Garn Um, obviously that's not going to happen at this point but, um – not necessarily.

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Jones All right.

Franz So file an extension.

Garn I'm sorry?

Franz File an extension.

Grabianowski You can file by tonight.

Clutter Yeah.

Jones Should I just go just three for three because it sounds like –

Franz Yeah.

Jones All right. So then I move that Docket 2022-05-DP get continued to the May 17<sup>th</sup> special meeting.

Franz Is there a second?

Madrick Second.

Franz Any further discussion? All in favor signify by aye.

All Aye.

Franz Opposed by nay.  
[No response]

Motion carries 6-0. We'll see you next – I don't know who we'll see but we'll see somebody representing Seake next month. Um, any further comments or discussions? Is there a motion to adjourn?

Lake So moved.

Franz Is there a second?

Walker Oh yes.

Madrick Nick should try – Nick's a good guy and he's a people person. Maybe you should get involved with trying to make everybody figure this out.

Garn Oh too kind. Thank you, yeah. I appreciate that.

Franz Was there something else you were going to add, Larry?

Jones Oh, I was just going to be a wise a--. No.

Franz All right. We have a motion and a second. All in favor signify by aye.

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All                   Aye.

Franz                Opposed by nay.  
                      [No response]

We're adjourned.