ORDINANCE NO. R-2015-17 TAX CODE(S) 82-06-35-017-126.009-027

AN ORDINANCE TO REZONE CERTAIN REAL ESTATE IN THE CITY OF EVANSVILLE, STATE OF INDIANA, MORE COMMONLY KNOWN AS 4610 Covert Avenue, Evansville, Indiana 47714.
BE IT ORDAINED BY THE COMMON COUNCIL OF EVANSVILLE, INDIANA, AS FOLLOWS, TO WIT:

Section 1: That Ordinance no. G-82-51, being the Municipal Code of the City of Evansville, Indiana, 1982 and more particularly Title XV, Chapter 153, by making certain changes in Atlas 1, which is made part of said section with respect to the following described real estate located in the City of Evansville, Vanderburgh County, State of Indiana:

> Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter, all in Section Thirty-Five (35), Township Six (6) South, Range Ten (10) West, in Vanderburgh County, Indiana, being more particularly described as follows:
>
> Commencing on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way, a distance of 464.55 feet South 89 degrees 33 minutes West from the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North and parallel to the East line of said Section a distance of 356.07 feet; thence South 88 degrees 56 minutes West a distance of 100 feet; thence South and parallel with the East line of said Section a distance of 354.96 feet to a point on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way; thence continuing South and parallel with the East line of said Section a distance of 50 feet to a point on the South line of said right-of-way; thence in an Easterly direction along said South line 100 feet; thence North and parallel with the East line of said Section 50 feet to the place of beginning.

by changing the zoning classification of the above-described real estate from R-1 to C-4, and said real estate is hereby so rezoned and reclassified.

Section 2. The Director of the Area Plan Commission of Evansville and Vanderburgh County is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on said Atlas 1 as set out in Section 1 of this Ordinance, and to make notation in ink thereon of reference to the number of this ordinance and the date of final publication of the amendatory ordinance after its passage and approval; however, failing to do so shall not

FILED
MAY 12 2015
Laura Windness
CITY CLERK

invalidate this Ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage by the Common Council, its approval by the Mayor, and its publication as required by law, which publication is now ordered.

Section 4. The subject property herein rezoned shall be used and developed only in accordance with the use and development commitment which is incorporated as part of this Petition for Rezoning and recorded in the office of the Recorder of Vanderburgh County, Indiana on _____ at Instrument No.:_____. No improvement location permits shall be issued unless the proposed use is in compliance with said recorded use and development commitment.

Passed by the Common Council of Evansville, Indiana, on this ___ day of _____, 2015.

_____
President

ATTEST:

_____
City Clerk

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said City, the ___ day of _____, 2015.

_____
City Clerk

Having examined the foregoing Ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said Ordinance and return the same to the City Clerk this ____ day of _____, 2015, at _____ o'clock.

_____
Mayor of the City of Evansville, Indiana

THIS INSTRUMENT PREPARED BY: Ryan M. Schulz, Kahn, Dees, Donovan & Kahn, LLP

USE AND DEVELOPMENT COMMITMENT

WHEREAS the undersigned petitioner, **Pinewood Development, Inc.**, ("Petitioner") an Indiana corporation, is the owner of certain real estate situated in the City of Evansville, Indiana, commonly described as 4610 Covert Avenue, which real estate (the "Real Estate") is more particularly described as follows, to wit:

> Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter, all in Section Thirty-Five (35). Township Six (6) South, Range Ten (10) West, in Vanderburgh County, Indiana, being more particularly described as follows:
>
> Commencing on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way, a distance of 464.55 feet South 89 degrees 33 minutes West from the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North and parallel to the East line of said Section a distance of 356.07 feet; thence South 88 degrees 56 minutes West a distance of 100 feet; thence South and parallel with the East line of said Section a distance of 354.96 feet to a point on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way; thence continuing South and parallel with the East line of said Section a distance of 50 feet to a point on the South line of said right-of-way; thence in an Easterly direction along said South line 100 feet; thence North and parallel with the East line of said Section 50 feet to the place of beginning.

WHEREAS, as the Real Estate is currently classified as an **R1** zoning districts under the Evansville Zoning Code and is so indicated on the zoning maps maintained by the staff of the Evansville-Vanderburgh County Area Plan Commission; and

WHEREAS, Petitioner has requested that the Real Estate be reclassified to zoning district **C-4**; and

WHEREAS, Petitioner is desirous of accommodating the concerns of the surrounding property owners by making a written commitment concerning the use and development of the Real Estate pursuant to I.C. 36-7-4-613;

NOW, THEREFORE, in consideration of the foregoing, Petitioner makes the following use and development commitment:

1. Use of the Real Estate shall be limited to those uses permitted in a General Commercial (C-4) District as set forth in the General Commercial (C-4) provision of the City of Evansville Zoning Code excluding the following:

(1) Adult arcade;
(2) Adult bookstore, adult novelty store or adult video store;
(3) Adult cabaret or juice bar or bikini bar;
(4) Adult motion picture theater;
(5) Adult theater;
(6) Nude model studio;

(7) Sexual encounter center;
(8) Peep show facility.

2. All commitments and undertakings herein expressed shall be binding on the Petitioner and the Petitioner's heirs, legal representative, successors and assigns, and shall run in the favor of the Area Plan Commission of Evansville-Vanderburgh County and all the owners of real estate lying within the radius of one (1) mile from the real estate described and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or equitable relief pursuant to the manner of enforcement as set forth in I.C. 36-7-4-613, 36-7-4-1013, and 36-7-4-1014. If it is necessary to initiate administrative or judicial proceedings to enforce any such commitment or undertaking, the person or entity obtaining enforcement in such proceedings shall also recover its reasonable attorneys' fees and costs of suit from the undersigned.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 12 day of May, 2015 by Petitioner, Pinewood Development, Inc., for the purposes set forth herein.

"Petitioner"
Pinewood Development, Inc.

By: J. Michael Burkdoll V.P.
J. Michael Burkdoll, Vice-President

STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named who acknowledged the execution of the foregoing Use and Development Commitment to be his free voluntary act and deed.

WITNESS my hand and Notarial Seal this day of May 12, 2015.

Rita L. Shews
NOTARY PUBLIC

A resident of Vanderburgh County, Indiana.

My commission expires: OCT. 1, 2017

KDDK:320425

This instrument prepared by:
Ryan M. Schulz, Esq.
Kahn, Dees, Donovan & Kahn, LLP
501 Main Street, Suite 305
PO Box 3646
Evansville, IN 47708
Telephone: (812) 423-3183

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. _____

CITY REZONING AFFIDAVIT

STATE OF INDIANA)
) SS: Date: _____
COUNTY OF VANDERBURGH)

Docket Numbers: _____

I, Ryan M. Schulz, hereby affirm under the penalties of perjury that I have mailed letters containing required information about a rezoning at 4016 Covert Avenue, Evansville, Indiana, to the following property owners on _____. I hereby certify that, to the best of my knowledge, the following (or attached) is a complete and accurate list of all abutting property owners whose properties touch at any point the owner's property, included in whole or in part in the ordinance for rezoning stated above. I obtained said list by looking up the tax codes and abutting property owners on the records and/or plat maps in the office of the Assessor and receiving a printout of the current owners of record and their most recent mailing addresses as listed on the records in the office of the Treasurer of Vanderburgh County on _____, 2015.

Letters were sent to:

Property Owner	Property Address	Owner Address	Tax ID Number
W. Walt & D. Lynn Lowe, Trustees	4601 Covert Avenue; 4609 Covert Avenue	4601 Covert Avenue Evansville, IN 47714	82-06-35-017-128.021-027; 82-06-35-017-128.033-027
Sung O. Jung	4601 Taylor Avenue	4601 Taylor Avenue Evansville, IN 47714	82-06-35-015-111.015-027
Geraldine Simon	4607 Taylor Avenue	4607 Taylor Avenue Evansville, IN 47714	82-06-35-015-111.014-027
Delbert Dean & Samantha Payne	4611 Taylor Avenue	4611 Taylor Avenue Evansville, IN 47714	82-06-35-015-111.013-027
Glenn M. & Debra J. Magenheimer	4508 Covert Avenue	4508 Covert Avenue Evansville, IN 47714	82-06-35-017-126.007-027
Randy G. Pruden	4618 Covert Avenue	6444 SR 66 Newburgh, IN 47630	82-06-35-017-126.010-027

The letters were sent CERTIFIED MAIL, RETURN RECEIPT SERVICE. The green receipts **AND ONE SAMPLE LETTER** are attached.

_____
Affiant's signature (Petitioner, attorney, or representative)

Subscribed and sworn to before me, a Notary Public in and for said County and State this ___ day of _____, 2015.

_____
(Notary Public)

My Commission expires: _____

Residence of Notary: _____County, Indiana

NOTE: THIS AFFIDAVIT MUST BE FILED IN THE OFFICE OF THE AREA PLAN COMMISSION **BY NOON THE TUESDAY BEFORE THE AREA PLAN COMMISSION MEETING.**

KDDK:320402

4-1-14

2015-20 -PC ORDINANCE NO. R- 2015-17

COUNCIL DISTRICT: WARD 1 Dan McGinn

PETITIONER Pinewood Development, Inc. PHONE 812-499-9100

ADDRESS 5200 Washington Avenue ZIP CODE 47715

OWNER OF RECORD Pinewood Development, Inc. PHONE 812-499-9100

ADDRESS 5200 Washington Avenue ZIP CODE 47715

1. Petition is hereby made for the amendment of the "Zoning Maps" of the Area Plan Commission of Evansville and Vanderburgh County, pursuant to the Indiana Code and the Municipal Code of Evansville.

2. Premises affected are on the North side of Covert Avenue a distance of 300 feet West (N.S.E.W.) of the corner formed by the intersection of Green River Rd. and Covert Avenue.
   Registered Neighborhood Association (if applicable) None

LEGAL DESCRIPTION:
SUBDIVISION See attached BLOCK _____ LOT NO. _____
(where applicable - if not in a subdivision, insert legal here or attach to ordinance)

3. The commonly known address is 4610 Covert Avenue, Evansville, Indiana 47714
4. The real estate is located in the Zone District designated as Residential
5. The requested change is to (Zone District) C-4 (commercial)
6. Present existing land use is Residential
7. The proposed land use is Commercial
8. Utilities provided: (check all that apply)
   City Water X Electric X Gas X Storm Sewer X
   Sewer: Private _____ Public X Septic _____
9. All attachments are adopted by reference.
10. The owner, or attorney for the owner, hereby certifies that the owner of record shown above owns 50% or more of the area of the above described real estate. I affirm under the penalties for perjury that the foregoing representations are true.

(REQUIRED) Signatures:

DATE 5/12/2015 (when signed) PETITIONER J. Michael Burkdoll
PRINTED NAME Pinewood Development, Inc. By: J. Michael Burkdoll, Vice President/Director

DATE 5/12/2015 (when signed) OWNER OF RECORD J. Michael Burkdoll
PRINTED NAME Pinewood Development, Inc. By: J. Michael Burkdoll, Vice President/Director

REPRESENTATIVE FOR PETITIONER (Optional)
NAME Kahn, Dees, Donovan & Kahn, LLP by: Ryan M. Schulz, Esq.
ADDRESS/ZIP 501 Main Street, Suite 305, Evansville, Indiana 47708
PHONE 812-423-3183

FILED
MAY 12 2015
Diana Windhorst
CITY CLERK

Legal Description

Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter, all in Section Thirty-Five (35), Township Six (6) South, Range Ten (10) West, in Vanderburgh County, Indiana, being more particularly described as follows:

Commencing on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way, a distance of 464.55 feet South 89 degrees 33 minutes West from the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North and parallel to the East line of said Section a distance of 356.07 feet; thence South 88 degrees 56 minutes West a distance of 100 feet; thence South and parallel with the East line of said Section a distance of 354.96 feet to a point on the North line of the old Evansville & Ohio Valley Railway Company, Inc. right-of-way; thence continuing South and parallel with the East line of said Section a distance of 50 feet to a point on the South line of said right-of-way; thence in an Easterly direction along said South line 100 feet; thence North and parallel with the East line of said Section 50 feet to the place of beginning.

C-2
R-3
R-1
C-4
BURDETTE AVE
SHILOH SQ
S GREENRIVER RD
WASHINGTON SQ
WASHINGTON SQ
MONROE AVE
JACKSON AVE
JACKSON CT
REZONE R-1 TO C-4
CRING AVE
TAYLOR AVE
LUTHER SQ
R-4
RAVENSWOOD DR
COVERT AVE
POLSTER DR
CO-2
CO-1
GREENCOVE AVE
CASS AVE
CASS CT
GREENCOVE AVE
CASS AVE
C-1
OAKWOOD PL
CLAYTON AVE
BRIARWOOD CT
BURDETTE AVE
GREENWOOD CT
SAINT PATRICKS CT
S KENMORE DR
OMER PL
R-2