

DENIED

ORDINANCE NO. R-2016-21 **AMENDED**

TAX CODE(S) 82-06-05-034-085.003-020

AN ORDINANCE TO REZONE CERTAIN REAL ESTATE IN THE CITY OF EVANSVILLE, STATE OF INDIANA, MORE COMMONLY KNOWN AS 5323 Weaver Rd., Evansville, Indiana

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY 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 Northwest Quarter of the Southeast Quarter of Section 5, Township 6 South, Range 10 West in Center Township, Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of the Southeast Quarter of said Section; thence along the west line of said Quarter Quarter Section, South 02 degrees 39 minutes 47 seconds West 282.50 feet to the southwest corner of a tract of land conveyed to Bradley D. Morton in Document 2009R00006225 in the Office of the Recorder of Vanderburgh County, Indiana and being the point of beginning; thence along the south line of said Morton tract, South 88 degrees 56 minutes 54 seconds East 210.00 feet to the southeast corner thereof; thence along the east line of said Morton tract, North 02 degrees 39 minutes 47 seconds East 282.50 feet to a point on the north line of the Northwest Quarter of the Southeast Quarter of said Section; thence along the north line of said Quarter Quarter Section, South 88 degrees 56 minutes 54 seconds East 146.21 feet; thence South 03 degrees 25 minutes 40 seconds West 379.34 feet; thence North 88 degrees 51 minutes 05 seconds West 200.00 feet; thence South 03 degrees 25 minutes 40 seconds West 229.35 feet to a point on the north line of a tract of land conveyed to Connie Engelbrecht in Document 2015R00014909 in the Office of said Recorder; thence along the north line of said Engelbrecht tract, North 88 degrees 56 minutes 54 seconds West 148.07 feet to a point on the west line of the Northwest Quarter of the Southeast Quarter of said Section 5; thence along said west line, North 02 degrees 39 minutes 47 seconds East 325.58 feet to the point of beginning and containing a gross area of 2.501 acres, more or less.

Also rights to a Private Road and Utility Easement described in Document 2010R00009139 in the Office of the Recorder of Vanderburgh, County, Indiana.

Subject to the right-of-way for Weaver Road off the west side thereof.

by changing the zoning classification of the above-described real estate from C-4 w/UDC to C-4 w/UDC, 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 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 \_\_\_\_\_, 2016.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said city, the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk

Having examined the foregoing Ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said Ordinance, and return same to the City Clerk this \_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_ o'clock \_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Evansville, Indiana

This instrument prepared by: Shannon S. Frank, Attorney, KAHN, DEES, DONOVAN & KAHN, LLP, 501 Main Street, Suite 305, Evansville, Indiana 47708 (Telephone: 812-423-3183).

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

**DENIED**

## USE AND DEVELOPMENT COMMITMENT

WHEREAS the undersigned Engelbrecht Family Limited Partnership ("Owner"), is the owner of certain real estate situated in the City of Evansville, Indiana, commonly described as 5323 Weaver Road, Evansville, Indiana 47711, which real estate is more particularly described on Exhibit "A".

WHEREAS, as the real estate is currently classified as C-4 with a Use and Development Commitment 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, Owner has requested that the Real Estate be classified to zoning district C-4 with a Use and Development Commitment; and

WHEREAS, Owner 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. 36-7-4-1015;

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

1. Uses. Use of the Real Estate shall be limited to the following:

The property may continue to be used as an orchard, with the addition of a vineyard. The real estate may also be used for wholesale and retail sales of agri-tourism products; for the production, processing and sale of products derived from or related to the produce grown on site.

The following uses shall not be permitted on the subject property:

- 1) All uses in Use Groups 9.
- 2) All Service uses in Use Group 7 EXCEPT the following: Catering Service and Restaurant and Cafeteria; and Beauty and Barber Shops.
- 3) All Retail sales uses in Use Group 8 EXCEPT the following: Antiques; Household Furnishing including furniture; Ice; Pets and Pet Supplies; Rugs and Floor Coverings; and Shrubbery or plants.
- 4) All the Service uses in Use Group 8 along with the use and Department Store EXCEPT the following: Lawn Mowing Service and Dance/Theatrical School or Studio.
- 5) All the Recreational Uses in Use Group 8, EXCEPT the following: Tavern or Restaurant serving alcoholic beverages; Dance Hall, Meeting

Hall or Party House; Theater; Arcade; Skating Rink; Health or Reducing Studio and Exercising or Sports Club.

- 6) The following listed uses in Use Group 8: Automotive service station and Union Hall/Trade Association Meeting Hall.
- 7) All retail sales in Use Group 10 EXCEPT Feed.
- 8) All the Service Uses in Use Group 10 EXCEPT the following: Bottling Plant; Food Vendor Operation; Glass Shop; Crating, Packing or Shipping Service; and Pest Control.
- 9) All the Retail Sales in Use Group 11.
- 10) All the Service Uses in Use Group 11 EXCEPT Shrub and plant nursery, landscaping, tree trimming and lawn and garden treatment service, contractor shops, and excavating contractor.

2. Ingress and Egress. In the event said Real Estate is utilized by an excavating contractor, a gate or other structure shall be installed on the Real Estate which restricts use of the roadway easement that lies to the north of said Real Estate to automobile and pick-up truck traffic only. Further, ingress and egress of excavating equipment shall be restricted to a roadway easement that lies to the south of said Real Estate and which intersects at Christ Road or which intersects near the current intersection of Weaver and Christ Roads. Further, in the event said Real Estate is utilized by an excavating contractor or as a contractor shop, there shall be no additional access points from the Real Estate onto Weaver Road, now or in the future, without Weaver Road being upgraded by the City of Evansville to a standard size road in accordance with the requirements of the Board of Public Works.

3. Removal of Trees from Nearby Property. Within one hundred twenty (120) days after the filing of the ordinance to amend the zoning classification of the Real Estate, Owner shall cause Dean Family Properties, LLC, the owner of the real estate commonly known as 612 Christ Rd., Evansville, Vanderburgh County, Indiana, Parcel ID 82-06-05-034-085.062-020 (the "Dean Family Properties Real Estate"), to remove such portion of the trees from the Dean Family Properties Real Estate in order that the decision sight distance related to the intersection of Weaver and Christ Road comply with the "Avoidance Maneuver A" of *Exhibit 3-3 Decision Sight Distance* of the American Association of State Highway and Transportation Officials' "A Policy On Geometric Design of Highways and Streets" (Fifth Edition, 2004), the pertinent section of which is attached and incorporated herein as Exhibit "B".

4. Term. The commitments and undertakings herein made and expressed shall terminate, expire and be of no further force or effect if the Real Estate should be rezoned due to the filing of some subsequent petition to amend the zoning classification of the Real Estate.

5. Effective Date. This Commitment shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and shall take effect upon the adoption of the zoning classification of the Real Estate from C-4 with a Use and Development Commitment to C-4 with a Use and Development Commitment Zoning District.

6. Binding Effect; Enforcement; Attorneys' Fees. All commitments and undertakings herein expressed shall be binding on the Owner and the Owner's heirs, legal representatives, successors

and assigns, and shall run in 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 herein described and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or other equitable relief pursuant to the manner of enforcement as set forth in I.C. and 36-7-4-1015. 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.

The person executing this instrument on behalf of Owner and Petitioner represent and warrant that the execution and delivery of this instrument is duly has been duly authorized and shall be binding upon the same.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 2nd day of September, 2016, for the purposes set forth herein.

**Engelbrecht Family Limited Partnership**

By: Connie Engelbrecht  
Connie Engelbrecht, General Partner

"Owner"

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF VANDERBURGH        )

Before me, a Notary Public in and for said County and State, personally appeared the within named Connie Engelbrecht, as the General Partner of Engelbrecht Family Limited Partnership, and acknowledged the execution of the above and foregoing to be the voluntary act and deed of said company.

WITNESS my hand and seal this 2nd day of September, 2016.



SHANNON S. FRANK  
Resident of Vanderburgh County, IN  
Commission Expires: November 6, 2016

Shannon Frank  
Notary Public

This Instrument was prepared by Shannon S. Frank, KAHN, DEES, DONOVAN & KAHN, LLP, 501 Main St., Suite 305, Evansville, Indiana 47708, (812) 423-3183

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

EXHIBIT "A"

Part of the Northwest Quarter of the Southeast Quarter of Section 5, Township 6 South, Range 10 West in Center Township, Vanderburgh County, Indiana and being more particularly described as follows:

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Subject to the right-of-way for Weaver Road off the west side thereof.

EXHIBIT "B"

(See attached)

demand where there is apt to be “visual noise” from competing sources of information, such as roadway elements, traffic, traffic control devices, and advertising signs.

The decision sight distances in Exhibit 3-3 (1) provide values for sight distances that may be appropriate at critical locations, and (2) serve as criteria in evaluating the suitability of the available sight distances at these locations. Because of the additional safety and maneuvering space provided, it is recommended that decision sight distances be provided at critical locations or that critical decision points be moved to locations where sufficient decision sight distance is available. If it is not practical to provide decision sight distance because of horizontal or vertical curvature or if relocation of decision points is not practical, special attention should be given to the use of suitable traffic control devices for providing advance warning of the conditions that are likely to be encountered.

Metric						US Customary					
Design speed (km/h)	Decision sight distance (m)					Design speed (mph)	Decision sight distance (ft)				
	Avoidance maneuver						Avoidance maneuver				
	A	B	C	D	E		A	B	C	D	E
50	70	155	145	170	195	30	220	490	450	535	620
60	95	195	170	205	235	35	275	590	525	625	720
70	115	235	200	235	275	40	330	690	600	715	825
80	140	280	230	270	315	45	395	800	675	800	930
90	170	325	270	315	360	50	465	910	750	890	1030
100	200	370	315	355	400	55	535	1030	865	980	1135
110	235	420	330	380	430	60	610	1150	990	1125	1280
120	265	470	360	415	470	65	695	1275	1050	1220	1365
130	305	525	390	450	510	70	780	1410	1105	1275	1445
						75	875	1545	1180	1365	1545
						80	970	1685	1260	1455	1650

- Avoidance Maneuver A: Stop on rural road— $t = 3.0$  s
- Avoidance Maneuver B: Stop on urban road— $t = 9.1$  s
- Avoidance Maneuver C: Speed/path/direction change on rural road— $t$  varies between 10.2 and 11.2 s
- Avoidance Maneuver D: Speed/path/direction change on suburban road— $t$  varies between 12.1 and 12.9 s
- Avoidance Maneuver E: Speed/path/direction change on urban road— $t$  varies between 14.0 and 14.5 s



Exhibit 3-3. Decision Sight Distance

Decision sight distance criteria that are applicable to most situations have been developed from empirical data. The decision sight distances vary depending on whether the location is on a rural or urban road and on the type of avoidance maneuver required to negotiate the location properly. Exhibit 3-3 shows decision sight distance values for various situations rounded for design. As can be seen in the exhibit, shorter distances are generally needed for rural roads and for locations where a stop is the appropriate maneuver.

For the avoidance maneuvers identified in Exhibit 3-3, the pre-maneuver time is increased above the brake reaction time for stopping sight distance to allow the driver additional time to detect and recognize the roadway or traffic situation, identify alternative maneuvers, and initiate a

response at critical locations on the highway (9). The pre-maneuver component of decision sight distance uses a value ranging between 3.0 and 9.1 s (10).

The braking distance from the design speed is added to the pre-maneuver component for avoidance maneuvers A and B as shown in Equation (3-4). The braking component is replaced in avoidance maneuvers C, D, and E with a maneuver distance based on maneuver times between 3.5 and 4.5 s, that decrease with increasing speed (9) in accordance with Equation (3-5).

The decision sight distances for avoidance maneuvers A and B are determined as:

Metric	US Customary
$d = 0.278 Vt + 0.039 \frac{V^2}{a}$	$d = 1.47 Vt + 1.075 \frac{V^2}{a} \quad (3-4)$
where: $t$ = pre-maneuver time, s (see notes in Exhibit 3-3); $V$ = design speed, km/h; $a$ = driver deceleration, m/s <sup>2</sup>	where: $t$ = pre-maneuver time, s (see notes in Exhibit 3-3); $V$ = design speed, mph; $a$ = driver deceleration, ft/s <sup>2</sup>

The decision sight distances for avoidance maneuvers C, D, and E are determined as:

Metric	US Customary
$d = 0.278 Vt$	$d = 1.47 Vt \quad (3-5)$
where: $t$ = total pre-maneuver and maneuver time, s (see notes in Exhibit 3-3); $V$ = design speed, km/h	where: $t$ = total pre-maneuver and maneuver time, s (see notes in Exhibit 3-3); $V$ = design speed, mph



In computing and measuring decision sight distances, the same 1 080-mm [3.5-ft] eye-height and 600-mm [2.0-ft] object-height criteria used for stopping sight distance have been adopted. Although drivers may have to be able to see the entire roadway situation, including the road surface, the rationale for the 600-mm [2.0-ft] object height is as applicable to decision sight distance as it is to stopping sight distance.



**DENIED**

VERIFIED PETITION FOR REZONING

**AMENDED**

2016-22 -PC

ORDINANCE NO. R-2016-21  
COUNCIL DISTRICT: Justin Elpers

PETITIONER Engelbrecht Family Limited Partnership PHONE 812-219-3244  
 ADDRESS 600 Christ Road, Evansville Indiana ZIP CODE 47711  
 OWNER OF RECORD Engelbrecht Family Limited Partnership PHONE 812-219-3244  
 ADDRESS 600 Christ Road, Evansville Indiana ZIP CODE 47711

- 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.
- Premises affected are on the East side of Weaver Road a distance of 511 feet (N.S.E.W.) of the corner formed by the intersection of Christ Road and Weaver Road.  
Registered Neighborhood Association (if applicable) N/A
- LEGAL DESCRIPTION: See attached Exhibit "A".
- SUBDIVISION \_\_\_\_\_ BLOCK \_\_\_\_\_ LOT NO. \_\_\_\_\_  
(where applicable - if not in a subdivision, insert legal here or attach to ordinance)
- The commonly known address is 5323 Weaver Road, Evansville, Indiana 47711
- The real estate is located in the Zone District designated as C-4 with UDC
- The requested change is to (Zone District) C-4 with UDC
- Present existing land use is Farm / Vacant
- The proposed land use is Excavating Company
- Utilities provided: (check all that apply)  
City Water X Electric X Gas \_\_\_\_\_ Storm Sewer \_\_\_\_\_  
Sewer: Private \_\_\_\_\_ Public X Septic \_\_\_\_\_
- All attachments are adopted by reference.
- 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 9-1-16 PETITIONER Connie Engelbrecht  
 (when signed) PRINTED NAME: Connie Engelbrecht, General Partner

DATE 9-1-16 OWNER OF RECORD Connie Engelbrecht  
 (when signed) PRINTED NAME: Connie Engelbrecht, General Partner

REPRESENTATIVE FOR PETITIONER (Optional) NAME: Shannon S. Frank  
 ADDRESS/ZIP: Kahn, Dees, Donovan & Kahn, LLP  
501 Main St., Ste 305, Evansville, IN  
 PHONE: (812) 423-3183

**FILED**  
SEP 02 2016

*Jana Widner*  
CITY CLERK

Exhibit A

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