

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT (REVISED FOR MARCH)**

**19-W-REZ-2      ZONE MAP AMENDMENT**  
Brian and Sonya Emerick, et al  
Various parcels in Jefferson Township

**MARCH 20, 2019**  
**AGENDA ITEM: 1**

**SUMMARY OF PROPOSAL**

Current zoning:    AG, Agricultural  
Proposed zoning:   AGP, Agricultural Production  
Property area:      1,270± acres

The petitioner, owners and agents of the subject property area, is requesting a zone map amendment for ten parcels located in Jefferson Township, as shown on the attached map. The requested zoning for the subject property is AGP, Agricultural Production.

***Existing zoning classifications and land uses***

Currently, the subject area is zoned AG, Agricultural, and is largely used for crop cultivation. There are stands of trees on several of the parcels, comprised of 10 to 15-acre tracts and totaling approximately 60 wooded acres. Dwellings and farm buildings are located on the properties at 5355 E. 700S, 5352 E. 700S, and 7383 S. 700E; all of these appear to be rentals. No confined feeding operations (CFOs) are currently located on any of these properties, nor is staff aware of any other livestock raising on the properties.

The surrounding zoning and land uses are shown on the attached map and aerial.

***Proposed land use***

The petitioner is requesting the zoning amendment to make use of the AGP district for agricultural operations; the petitioner has indicated that there would be no foreseeable change in the current land use for crop production. As stated to staff, they intend to change the zoning classification in order to reflect the desirability of this land and vicinity for solely agricultural uses, as opposed to the existing AG district that allows for agriculture and a variety of other uses.

***Zoning code criteria***

For reference, AGP permits a far smaller list of uses than AG; however, it does allow for both Class 1 and Class 2 CFOs without need for a Special Exception approval. A Class 3 CFO would be permissible with a Special Exception. A comparison of the districts' uses is also attached.

With the code changes adopted in 2018, the minimum contiguous area for rezoning to AGP is 40 acres. An area of at least 80 acres would be required to be zoned AGP if a Class 3 CFO is proposed. Parcel #92-10-23-000-101.000-006, at 78 acres, would not meet the minimum to establish such a CFO, unless additional contiguous property were to be zoned AGP.

The zoning code requires a minimum 20-acre parcel. Since all of the parcels included in the petition exceed 20 acres, none would be considered legal nonconforming. Other standards also appear to be compliant.

**REVIEW CRITERIA**

Indiana Code §36-7-4-603 and Section 12.2(F) of the zoning ordinance state the criteria listed below to which the Commission must pay "reasonable regard" when considering amendments to the zoning ordinance. Staff's comments are under each criterion.

**1. The most recently adopted Comprehensive Plan;**

The Land Classification Map of the 2011 Comprehensive Plan "depicts the County's land use and

development form goals (land classification) in a conceptual manner. It should not be construed representing precise location of land classifications, but used as a foundation for support and influence with land use and development form decisions and zoning map changes.”

So, while the precise location of these classification areas is conceptual and open for interpretation, particularly around the fringes, the size of the areas involved seem to be large enough to make at least some determination that the subject properties lie within or near areas classified as “Agricultural,” “Transitional Agricultural,” “Rural Residential,” and “Conservation and Open Space.” This table shows the apparent classification of the subject parcels based on the map.

<i>Parcel #</i>	<i>Agricultural</i>	<i>Transitional Agriculture</i>	<i>Rural Residential</i>	<i>Conservation &amp; Open Space</i>
92-10-03-000-211.000-006	X			
92-10-10-000-102.000-006	X			
92-10-10-000-301.000-006	X			
92-10-13-000-203.901-006			X	
92-10-13-000-401.000-006			X	
92-10-15-000-101.901-006	X			X
92-10-15-000-201.000-006	X			
92-10-15-000-201.001-006	X			
92-10-22-000-201.900-006	X	X		X
92-10-23-000-101.000-006			X	

In its text, the Comprehensive Plan describes the purpose of the Agricultural classification as “to maintain large, undeveloped areas for productive agricultural uses and intense agricultural-related uses.” The location of this classification is described as “generally away from municipalities and residential development...where there are less than fifteen (15) dwelling units per square mile, low demand for new dwelling sites, and high cost to provide basic services.” Generally 90% of the acreage per square mile is used for agricultural production. Recommended land uses include large farms, CFOs, farmsteads, and other uses.

The Plan describes the purpose of Transitional Agriculture classification as “to allow farmland and residential uses to coincide in appropriate rural areas.” The classification may apply to “areas where a portion of the agricultural land has been divided into tracts that are forty (40) acres or less...where there are more than fifteen (15) dwelling units per square mile, some demand for new dwelling sites, and low cost to provide basic services.” Uses would include small farms, farmsteads, single-family residences, and other uses. New residential lots would be 2-10 acres in area, while up to 50% of the acreage per square mile would *not* be used for agricultural production.

Rural Residential as a land classification (not to be confused with the identically-named zoning district) is intended “to allow residential development in rural areas with large lots and large front yard setbacks.” The location would be for “rural areas not suitable for productive agriculture...areas where there is demand for new dwelling sites and low cost to provide basic services...clustered near other residential uses...outside of predominantly agricultural or prime agricultural areas.” Lots would be 2-10 acres in size, subdivisions would be expected, and nearly all of the acreage per square mile would be non-agricultural.

Since the Land Classification Map's intent is to show the development goals for an area, the current conditions of the mapped classifications in the vicinity of the subject properties do not necessarily align with the textual descriptions. For example, the square mile bounded by 700S, 800E, 800S, and 700E falls into the "Rural Residential" classification, and has over 20 dwellings with sewer service nearby, but is roughly 80% agricultural uses. As such, the current conditions more closely align with the description of "Transitional Agriculture." This can lead to discrepancies when considering the current usage versus the conceptual long-term usage of the area that the Commission must examine carefully.

As a starting point for the Commission's examination may then be a general comparison of the uses, purposes, and descriptions of the Plan's classifications with the current zoning districts. Such a comparison seems to indicate that the "Agricultural" classification could include both the AGP and AG zoning districts, while the "Transitional Agriculture" classification seems to be more similar to the AG zoning, with some RR used for some subdivisions. The "Rural Residential" classification appears to be like the RR zoning; although the RR district may actually align more with the Plan's "Residential" classification. So, the subject properties in the "Agricultural" classification area may be appropriate if zoned as AGP, while those properties lying in the other classifications may not be.

Additionally, the Plan's text recommends to "support well-managed and properly located industrialized farms." At a zoning level, "well-managed" may not be possible for the Commission to consider. However, the Commission should pay reasonable regard to whether these properties are "properly located" for the AGP zoning since it would permit Class 2 CFOs. Both the AG and AGP districts permit CFOs and general agriculture; the primary differences are the size of the CFO permitted by-right and the scope of non-agricultural uses permissible within the district. The Commission should determine whether these properties should be considered as "prime" agricultural land and preserved for productive agriculture, or whether the property is better to continue as agricultural with allowances for other uses and an expectation of development at some point in the future.

Finally, returning to the Conservation and Open Space classification, in this case that appears to be the floodplains of two creeks. The plan describes conserving these areas to "protect and enhance environmental features." Practically applying this recommendation to these properties would mean restricting development in the floodplain area, which is already regulated by the floodplain section of the zoning code. The Plan suggests that any land classification would be compatible when adjacent to this classification, so the use of the subject property for agricultural or residential uses, outside of the floodplain area, would be in line with the Plan.

**2. The current conditions and the character of current structures and uses in each district;**

This area of Jefferson Township has historically been subject to land splits and large-lot development, leading to numerous sub-20-acre residential properties flanking or nearby the subject properties. At least five platted subdivisions lie within 500' of the subject properties, most of which are 1-2 lots or roadside plats. The exception is Westfield Passage located on 800S, which contains 10 lots off of Westfield Trail.

The intent of the AGP zoning district is to "provide a land use category for intensive agricultural uses and to recognize certain needs of the agricultural community." Further, the Plan Commission "should strive to protect this district from conflicting land uses...and any use that may inflict

significant environmental impacts or be injurious to neighbors.” The intent further states that the district is to protect an AGP-zoned property from development that may object to or conflict with agricultural operations. When considering the current conditions and character of current uses in the area, it seems that placement of AGP should be in areas that are not already at least moderately-fractionalized with smaller residential tracts. Otherwise, the district may actually be creating the conflict that the district is intended to avoid. So the Commission should examine the subject properties as to whether AGP zoning regulations would complement the existing area or if they would be an insertion into an area of incongruous uses.

3. **The most desirable use for which the land in each district is adapted;**

The northern and easternmost parcels in the request lie in relatively close proximity to sanitary sewer infrastructure (less than one mile away), and the northernmost two parcels are located on a major roadway (SR 14). These factors suggest that those properties may be more desirable for land development in the near future than properties located farther away from services and on lesser roadways.

Agriculture production can be viewed as an ultimate use in itself, rather than serving a placeholder for other types of development. If the Commission considers this, preserving the large tracts of land proposed in the request may be most desirable to preserve them for future farming activity.

4. **The conservation of property values throughout the jurisdiction;**

While the petitioner has indicated no intention to build a CFO of any size in the foreseeable future, the proposed AGP zoning of this request does permit, by-right, larger CFOs than those permitted under the current AG zoning. A CFO of any size may have negative effects on property values in the area if the CFO is not well-managed and if any adverse performance effects are not mitigated. If CFOs are well-managed and any adverse effects mitigated by location, distance, or some other means, the effect on property values is indefinite.

However, since AGP permits a smaller overall palette of uses than the existing AG district, concerns about certain uses already permissible in AG (such as kennels, auto repair shops, machine shops, hair salons, etc.) affecting surrounding land values could be lessened. AGP also serves as a check on residential development, which some persons view as more injurious to adjacent property values than CFOs.

So, the effect of rezoning to AGP or keeping the existing AG zoning on property values throughout the area of the proposal seems to be indeterminate and may be positive or negative depending on the specific persons in the marketplace and the specific location in question.

A possibility of “bridging” the two effects on values may exist if the petitioners and Commission could agree on a zoning commitment restricting the most intense agricultural uses (i.e. CFOs) on the properties that such uses may have the greatest impact on. If such a zoning commitment is to be considered, staff suggests that the Commission hold off on a recommendation until the commitment can be formulized in writing.

Since the February meeting, the attorney for the remonstrance has submitted a proposed set of zoning commitments for the Commission’s consideration. Statute allows that commitments may be required by the Commission (and later, Commissioners) as part of a rezoning recommendation. However, such requirement is ineffective without the petitioner’s agreement. Thus, these

commitments, having been proposed by non-petitioners, should be discussed with the petitioner if the Commission desires to move forward in requiring them.

That said, the authority of requiring commitments at all is at the Commission's discretion. Since the Commission must examine many factors in a rezoning case, the issues addressed by commitments may be only part of the Commission's overall purview. There may be other aspects that carry more weight than a particular land use or parcel. So, the Commission is not obligated to accept the commitments, require them, or make a recommendation a certain way even if they resolve one particular issue.

**5. Responsible development and growth;**

The Commission must determine if the AGP district is an enhancement or preservation of the existing agricultural uses in line with the recommendations of the Comprehensive Plan or whether it may stifle recommended and desirable development and growth. As discussed in the first section, the subject properties appear to straddle several recommended future classifications, so the preservation of agricultural land on some parcels may be more responsible for the long-term development and growth of the county, while other parcels may be more "prime" for development than sustained agricultural use.

In addition to the above comments, it was noted in the presentations at the February meeting that the requested AGP zoning may be a method to preserve large tracts of property for development in the future, beyond the planning horizon of the current Comprehensive Plan (roughly 20-plus years). It was stated that in the future, these conserved parcels may be developed more intensely/densely than what is currently recommended by the Plan, which may be smarter growth than to permit many 2- to 10-acre residential parcels throughout the southeast Jefferson Township area.

As a principle, planning practice usually promotes more intense, mixed uses versus low-density singular uses. Since 2- to 10-acre residential parcels are usually difficult to redevelop for other uses or even denser residential developments, having areas of vacant property conserved for nodes of more dense development among lower density areas may be sensible.

In applying this concept to this rezoning request, the westernmost parcels could be an example of this concept defining a "line in the sand" or a "growth boundary" since they are already designated for continuation of agricultural operations by the Comprehensive Plan.

Looking at the eastern parcels, though, the application of the concept is not clear. The Comprehensive Plan expects to see development occurring in the southeast Jefferson Township area within the planning horizon of 20 years (approximately 2030), while this concept would modify the Plan and push development beyond 2030. Implementation of a zoning district based on a planning concept that is divergent from the duly adopted Plan should be highly scrutinized by the Commission. If such practice is desirable, then the Plan should be amended to include the concept in order to remove doubt about the practice being responsible growth and development.

**6. The public health, safety and welfare.**

Being that the uses permitted in the requested AGP zoning are already mostly permitted the existing AG district, there would not likely be much change in effect on the public health, safety, and welfare.

The notable difference in size of permitted CFOs in AGP versus AG can be argued to have a different impact on public health, although regulations and permitting requirements are in place through IDEM that could be expected to mitigate such health impacts.

**STAFF NOTE**

As the above commentary indicates, this request is broad in its geography and diverse in its neighboring uses. The Plan Commission may desire to discuss the merits of the requested zoning at the parcel level, and such piece by piece discussion may be easier to understand. However, it is the recommendation of staff and legal counsel that the Plan Commission's final recommendation (favorable, unfavorable, or no recommendation) should be stated based on the petitioner's request, not based on individual parcels.

That said, it could be permissible for the Commission and petitioner to negotiate the aspects of the request itself prior to the Commission's recommendation on a final request version. A continuance is also an option, and may be particularly useful if the request is modified in a substantial respect to permit additional review and evaluation.

Date report completed: 3/14/2019

**PLAN COMMISSION ACTION**

Motion By:

Second By:

<b><i>Vote:</i></b>	<b>Deckard</b>	<b>Hodges</b>	<b>Johnson</b>	<b>Mynhier</b>	<b>Western</b>	<b>Wolf</b>	<b>Wolfe</b>	<b>Woodmansee</b>	<b>Wright</b>
<i>Yes</i>									
<i>No</i>									
<i>Abstain</i>									