

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT**

**19-W-REZ-1      ZONE MAP AMENDMENT**  
Mark & Alayne Johnson  
Various parcels in Smith Township

**FEBRUARY 20, 2019  
AGENDA ITEM: 2**

**SUMMARY OF PROPOSAL**

Current zoning:    AG, Agricultural  
Proposed zoning:  AGP, Agricultural Production  
Property area:     1,045± acres

The petitioner, as co-owner and agent of the corporate owner of the subject property area, is requesting a zone map amendment for sixteen parcels located in Smith Township, as shown on the attached map. The requested zoning for the subject properties 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 some of the parcels, comprised of 5 to 35-acre tracts and totaling approximately 55 wooded acres. Dwellings and farm buildings are located on the properties at 7580/82 E. 150N, 7789 E. 150N, 8365 E. 150N, and 1185 N. Johnson Rd. Some of these residences are occupied by relatives and/or co-owners of the petitioner, while others may be rentals. Confined feeding operations (CFOs) are currently located at four locations on the subject 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 uses for crop cultivation and livestock raising. As stated to staff, they intend to change the zoning classification in order for the zoning map to reflect the particular desirability of this land and vicinity for 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. Thirteen of the sixteen parcels in the request form a contiguous area totaling 870± acres, while two nearby areas of 78 and 97 acres create the balance of the proposal. An area of at least 80 acres is required to be zoned AGP if a Class 3 CFO were to be proposed. Parcel #92-04-34-000-403.000-009, 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 size if created under AGP. One parcel in the proposal does not meet that minimum, and so would be considered legal nonconforming. Other lot standards 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 location of the subject properties seem to place them entirely within the “Agricultural” classification, except for about two acres located in floodplain and classified as “Conservation and Open Space.”

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.

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 this case, most of the Plan’s description does seem to match the existing conditions. All subject parcels are a significant distance from public utilities, with the nearest sewer over a mile away at Churubusco. Sections 35 and 36, where the majority of the subject property lies, have less than 10 dwellings per section, relatively low demand for new dwelling sites, and most of the acreage used for agriculture and farmsteads (and a golf course).

Section 34 has several dwellings fronting Johnson Road, including the Westfield Acres subdivision (platted 1979) at the corner of 150N and Johnson, which brings the dwellings within that square mile to about 24; however, only two new dwelling locations have been established in the past 20 years. Sections 27 and 25 also have 12-15 dwellings in the square mile, and few new dwellings in the vicinity of the subject parcels. All of these sections also have high percentages of agricultural use, though not as high as found in Sections 35 and 36.

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. So, the subject properties in the “Agricultural” classification area may be appropriate zoned as AGP, although the existing AG zoning may also be appropriate in meeting the Plan’s recommendation.

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 by-right. 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. Given the existing CFOs in operation on the properties and the relatively low dwelling density of the area of the subject properties, permitting Class 2 CFOs may be appropriate, particularly on the properties located in Sections 35 and 36. In any case, the Commission should determine whether the proposed 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.

The Conservation and Open Space classification, which appears to touch on about two acres of the subject parcels, appears to be the floodplain of the Eel River. The plan describes conserving these areas to “protect and enhance environmental features.” Practically applying this recommendation 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 either agricultural zoning likely would be in line with the Plan.

2. **The current conditions and the character of current structures and uses in each district;**  
As described above, this area of Smith Township historically has had land splits along Johnson Road near the 150N intersection, but relatively few along 150N or farther away from the intersection. The surrounding properties to the subject area are used for agriculture and farmsteads (current and historic), with no subdivisions or clusters of residences, other than the strip along Johnson Road.

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 parcels involved in the petition have long-been used for agriculture; there has been little significant non-agricultural development in the vicinity; no utilities are nearby; and roads in the area are mostly local. All of these factors seem to reinforce agriculture as being a desirable use here. The question then is whether AG or AGP is most desirable for these parcels. AG is a district that permits agriculture as well as many other uses, and often could be viewed as a placeholder for more intense development in the future (be it 5 or 25 years). The AGP district intent shifts the perspective of agriculture to being an ultimate use in itself, with the goal of preserving large tracts of land for many intensities of agricultural use well into the future. Finally, some of these parcels already have Class 2 CFOs in operation, and AGP would permit those and new locations by-right.

The location of CFOs near the residential strip of Johnson Road may be less desirable, but much of the area seems to have been shown to be desirable for such use.

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

While the petitioner has indicated no intention to build another 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. Such uses may have negative effects on property values in the area if the CFO is poorly located, not well-managed, and if any adverse performance effects are not mitigated. Generally, such impacts would be minimal for the majority of the subject area, but might increase at the points nearest residences.

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 jurisdiction seems to be indeterminate. In this case, there may be minimal effect.

**5. Responsible development and growth;**

The Commission must determine if the AGP district request is an enhancement to or preservation of the existing agricultural uses in line with the recommendations of the Comprehensive Plan or whether it may stifle desirable land development. As discussed above, these properties seem to be unlikely to be suitable for large scale land development within the planning horizon, and the conditions around the properties generally seem to be compatible with agricultural production uses, with the exception of individual residences.

**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 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. Such CFOs do already exist on some of the subject properties, and appear to have had no effects of which staff is aware.

Date report completed: 2/14/2019

**PLAN COMMISSION ACTION**

Motion By:

Second By:

<i>Vote:</i>	<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>									