



CITY OF FISHERS AGENDA

BOARD/COMMISSION: Plan Commission Meeting

DATE: 5/3/2023, at 6:00 PM

DIRECTIONS: Launch Fishers Theater , 12175 Visionary Way, Fishers, IN 46038

Members of the public can [submit comments to the board via form submittal](#) before 12pm on the day of the meeting.

Members of the public may [stream the live meeting](#) online.

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should [email Kelly Lewark](#), Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

1. **Call to Order**
2. **Pledge of Allegiance to The Flag of The United States**
3. **Roll Call**
4. **Approval of Previous Minutes**
 - a. 4-12-23
5. **Public Hearings**
 - a. **Magnolia Grove Salon- CONTINUED FROM APRIL MEETING**
Parcel: 13-11-35-00-00-041.001
Address: 13483 E 116thCase: RZ-22-4
Request: To approve of a rezone of 1.76 acres from R2 to C1 with conditions.
Petitioner: Bill Butz (bill.butz@kimley-horn.com)

Planner: Megan Vukusich, Director of Planning and Zoning
(vukusichm@fishers.in.us)

b. UDO Update – CONTINUED FROM APRIL MEETING

Case: TA-23-2

Address: Citywide

Request: Consideration of a text amendment to the Unified Development Ordinance (UDO) establishing voting requirements for new HOAs.

Petitioner: Megan Vukusich, Director (vukusichm@fishers.in.us)

6. Staff Communication

7. Summary of Council Action

8. Adjournment

**CITY OF FISHERS
ADVISORY PLAN COMMISSION MINUTES
April 12, 2023
LAUNCH FISHERS THEATER**

The meeting of the Advisory Plan Commission convened at 6:15 p.m.

Mr. Stevenson confirmed quorum and called the meeting to order.

Katie Jackson was welcomed by Mr. Stevenson as a new member.

A roll call was taken and those members present were: Rick Fain, Bill Stuart, Selina Stoller, Howard Stevenson, Steve Richards, Bruce Molter, Kim Logan, Todd Zimmerman, Katie Jackson. Pete Peterson was not present. Others present: Rodney Retzner, Megan Vukusich, Kay Prange, Ross Hilleary, Tracy Gaynor, Josh Huser, Brad DeReamer, Tom Murray, Jocelyn Vare, Bill Butz, Thomas Perkins, Chris Cooke, Elizabeth Cooke

Ms. Logan made a Motion to approve the Minutes from the 3-1-23 meeting, seconded by Mr. Fain. The Motion was approved 7-0. Ms. Jackson abstained. Mr. Zimmerman arrived after this vote.

a. Magnolia Grove Salon

Parcel: 13-11-35-00-00-041.001

Address: 13483 E 116th

Case: RZ-22-4

Request: To approve of a rezone of 1.76 acres from R2 to C1.

Petitioner: Bill Butz (bill.butz@kimley-horn.com)

Planner: Bre King, Senior Planner (kingb@fishers.in.us)

Tom Perkins, representing the Petitioner, asked for a continuance to the May meeting. This will allow time to meet with the neighbors. Megan Vukusich, Director of Planning and Zoning, agrees with the continuance.

Mr. Stevenson asked for a Motion. Ms. Stoller made a Motion to continue the item, seconded by Ms. Logan. The Continuance was approved, 9-0.

b. UDO Update – CONTINUED FROM MARCH MEETING

Case: TA-23-2

Address: Citywide

Request: Consideration of a text amendment to the Unified Development Ordinance (UDO) establishing voting requirements for new HOAs.

Petitioner: City of Fishers Planner: Megan Vukusich, Director (vukusichm@fishers.in.us)

Megan Vukusich presented a summary of the UDO update regarding new HOAs. Meetings were held with developers and an HOA Town Hall to discuss the challenges of meeting quorum in HOA meetings.

Revised proposed language was reviewed- annual budget approval would need a simple majority, HOA operations would need no more than 50%, all other decisions would go by the governing documents. Staff is open to more suggestions and continuance for another month. Mr. Stuart confirmed that this is not retroactive to existing HOAs. Mr. Retzner stated that there is no way to enforce these private contracts between citizens and their HOAs for HOAs already in existence.

Mr. Stevenson opened the Public Hearing.

Brad DeReamer (13142 Oakford Trail) – this is all going in the right direction but item #4 conflicts with State law. Later in the Public Hearing, he stated that a bankrupt developer still doesn't have to turn over the HOA.

Tom Murray (9512 E. 59th St.) – Mr. Murray has represented hundreds of HOA's over the years. The governing docs need to be cleaned up. The wording is vague and redundant.

Josh Huser (12863 Shakespeare) – representing Avalon and looking for a provision for a lower threshold.

Mr. Stevenson closed the Public Hearing.

In Committee discussion, Mr. Stevenson agrees that we need to hone in on this. Ms. Stoller is grateful for feedback and in favor of continuance. Mr. Stuart confirmed with Mr. Hauser that Avalon bylaws need 75% to be changed. Mr. Murray spoke about unrealistic quorums, dismal attendance, homeowner apathy. Online voting is an option but also has a low return rate.

Mr. Stevenson asked for a Motion. Ms. Stoller made a Motion to continue, seconded by Ms. Logan. The Motion to continue was approved, 9-0.

2. Staff Communications:

Summary of Council Action- Geist Park was approved.

Megan Vukusich presented the [Allisonville Road Corridor Study](#).

This was a community-led study with focus groups and 1600 responses. Top topics were:

- Land use
- Street scape
- Connectivity

Roundabouts : 96th St. project in 2023 116th St. project in 2024

Highlights include greening the corridor, The White River park identity, site improvements such as Mashcraft and Allisonville Nursery, Kroger's move to the east, this is a 5-10 year plan.

The Meeting was adjourned at 7:00 p.m.

Respectfully Submitted by:

Kay Prange, Recording Secretary



Advisory Plan Commission Staff Report

Meeting Date: May 3, 2023

DEPARTMENT CONTACT:

Megan Vukusich, Department of Planning & Zoning, 3 Municipal Drive, Fishers, IN. 46038

CASE NUMBER:

RZ-22-4

PETITIONER:

Bill Butz of Kimley-Horn

PROPERTY ADDRESS/LOCATION:

13484 E 116th

REQUEST:

Consideration of a rezone of 1.76 acres from R2 to C1 with conditions.

EXISTING ZONING:

R2

PROPOSED ZONING:

C1 with conditions (C1c)

FISHERS 2040:

Suburban Residential

LOT SIZE: 1.76

LOCATION MAP

STAFF RECOMMENDATION

☐ Favorable Recommendation ☐ Unfavorable Recommendation ☒ No Recommendation

PETITION OVERVIEW:

The current zoning of the property is R2-Residential. The property currently has a single-family home. The petitioner has requested a rezone to the C1 zoning district to allow for the proposed use of a hair salon. After meeting with neighbors to discuss concerns regarding this development, the petitioner has reduced the size of the building and has agreed to the following conditions:

- 1) That the property owner voluntarily annex into city limits;
- 2) Hours of operation be limited to 8am to 8pm, Monday through Saturday. Closed on Sundays;
- 3) All lighting fixtures shall be full-cut off, with a zero-foot candle lighting level at the property line; From 10pm to 8am, lighting shall be limited to the amount required for security purposes only;
- 4) Uses are limited to the following: Office, medical office, beauty/hair salon, day spa, nail salon;
- 5) The building architecture and site design shall be substantially similar to the plans included as Exhibit C, including a parking lot with a maximum of 49 parking spaces.

Development Standards

Any future development will be required to meet all development standards of the Fishers Unified Development Ordinance for a C1 zoning district, unless otherwise deviated from in the above conditions.

Traffic & Site Access

The Fishers Engineering Dept. is reviewing traffic and site access. A memo from traffic consultant, A&F Engineering, with recommendations for site access will be provided at the meeting for review.

Fishers 2040

The Fishers 2040 plan lists the future land use as suburban residential.

SURROUNDING LAND USE & ZONING:

North: R2 – Institutional Use

East: PUDC (116th & Olio PUD)– Commercial Use

South: ER- Residential Use

West: R2 – Institutional Use

SUMMARY OF NEIGHBORHOOD MEETINGS & PUBLIC COMMENT:

Two neighborhood meetings were held on 10/27/2022 and 4/18/2023 to discuss this project with neighbors. During these meetings neighbors expressed concerns about the impact of additional commercial development in this area related to traffic and increased congestion.

Public Comments

Public Comments were received prior to the additional commitments being added by the petitioner but are included on the agenda for the Plan Commission. Comments have been received from the following residents:

- Donna Bond - 13555 E 114th St
- Angela & Andy Mattingly - 13487 E 116th
- Jacquelyn Thompson - 13429 E 116th St
- Chris & Kim Cook - 13595 E 114th St

STAFF RECOMMENDATION:

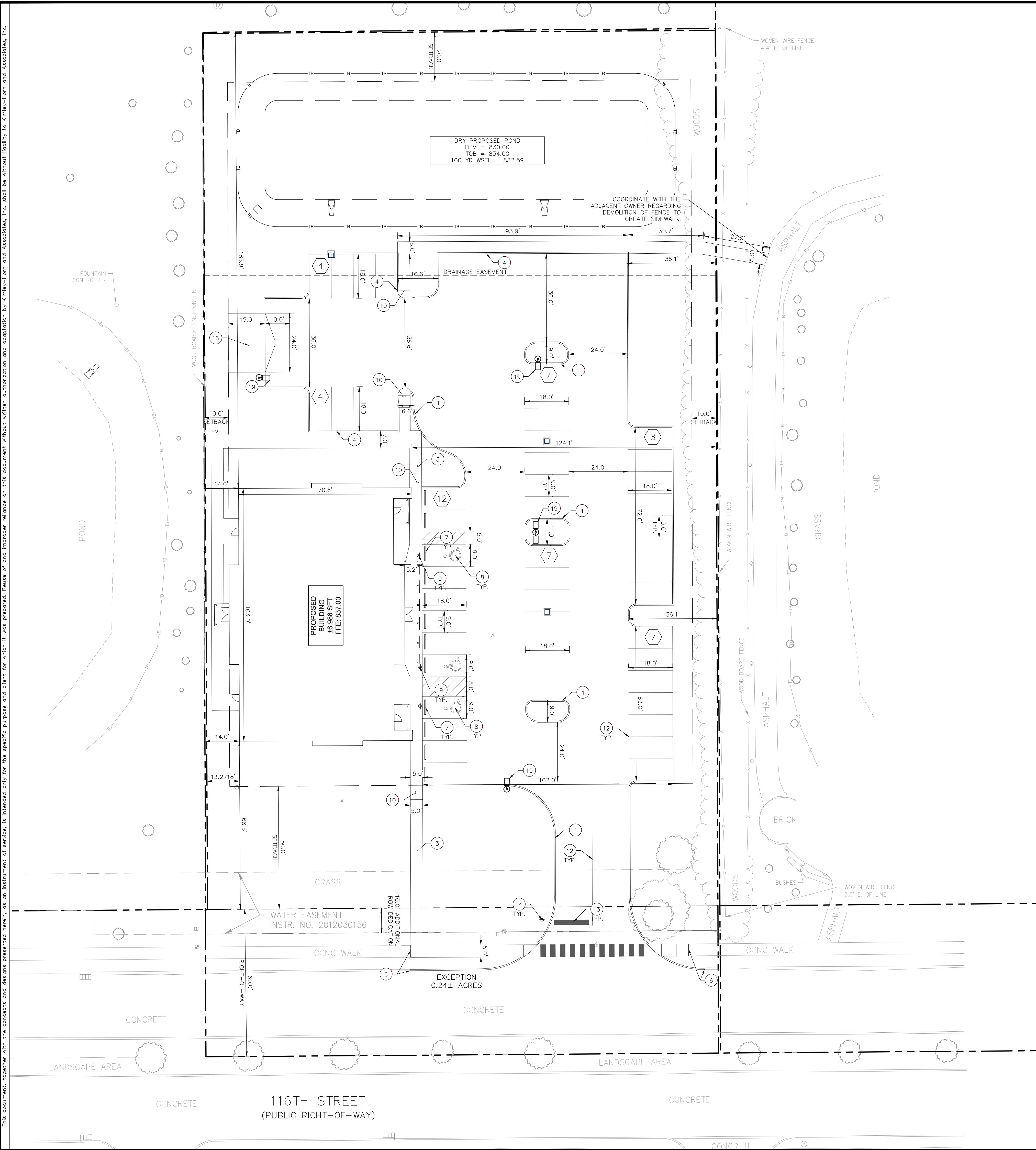
When making their decision, Plan Commission shall be reasonable regard to:

1. The Comprehensive Plan;
2. Current conditions and the character of structures and uses in each zoning district;
3. The most desirable use for which the land in each zoning district is adapted;
4. The conservation of property values throughout the jurisdiction; and
5. Responsible development and growth.

Staff has no recommendation for Plan Commission. This item is anticipated to go to the City Council on May 15, 2023, for final reading.

STAFF RECOMMENDATION

☐ Favorable Recommendation ☐ Unfavorable Recommendation ☒ No Recommendation



	<u>STANDARD DUTY ASPHALT PAVEMENT</u> SEE CONSTRUCTION DETAILS FOR PAVEMENT SECTION
	<u>RIGHT OF WAY PAVEMENT</u> SEE CONSTRUCTION DETAILS FOR PAVEMENT SECTION
	<u>CONCRETE SIDEWALK</u> SEE CONSTRUCTION DETAILS FOR PAVEMENT SECTION
	<u>HEAVY DUTY CONCRETE PAVEMENT</u> SEE CONSTRUCTION DETAILS FOR PAVEMENT SECTION

SITE ZONING	=	C1	
SITE ACREAGE	=	1.76	AC.±
BUILDING AREA	=	6,986	SF
BUILDING HEIGHT	=	27'	FT
PARKING SPACES (STANDARD) REQUIRED	=	72	SPACES
PARKING SPACES (ACCESSIBLE) REQUIRED	=	3	SPACES
PARKING SPACES (STANDARD) PROVIDED	=	46	SPACES
PARKING SPACES (ACCESSIBLE) PROVIDED	=	3	SPACES
TOTAL PARKING SPACES PROVIDED	=	49	SPACES

1. CONCRETE CURB, TYP. (SEE DETAILS)
2. DEPRESSED CONCRETE CURB AND GUTTER (SEE DETAILS)
3. CONCRETE SIDEWALK, TYP. (SEE DETAILS)
4. COMBINED CURB AND WALK (SEE DETAIL) (5' FROM FACE OF CURB)
5. CONCRETE CURB AND GUTTER (SEE DETAILS)
6. CONNECT TO EXISTING PAVEMENT, SIDEWALK, CURB, TYP.
7. CONCRETE PARKING BUMPER TYP. (SEE DETAILS)
8. ACCESSIBLE PAVEMENT MARKINGS, TYP. (SEE DETAILS)
9. ACCESSIBLE PARKING SIGN, TYP. (SEE PLAN FOR VAN LOCATION)
(MUTCD R7-8, SEE DETAILS)
10. ACCESSIBLE RAMP (SEE DETAILS)
11. 2' WIDE TACTILE WARNING STRIP
12. 4" WIDE PAVEMENT MARKING, WHITE SOLID LINE, TYP.
13. 24" WIDE STOP BAR, TYP. (SEE DETAILS)
14. STOP SIGN, TYP. (MUTCD R1-1, SEE DETAILS)
15. CONCRETE BOLLARD, TYP. (SEE DETAILS)
16. TRASH COMPACTOR AND ENCLOSURE
(SEE ARCHITECTURAL PLANS FOR DETAILS)
17. TRANSFORMER PAD (REFER TO UTILITY PROVIDER)
18. MONUMENT SIGN (SEE ARCHITECTURAL PLANS FOR DETAILS)
19. LIGHT POLES SHOWN FOR COORDINATION ONLY
(SEE SITE LIGHTING PLAN)
20. BIKE RACK (SEE LANDSCAPE PLAN FOR DETAILS)
21. RETAINING WALL (SEE ARCHITECTURAL PLANS FOR DETAILS)
22. 2' CURB TURNOUT (SEE DETAILS)
23. 3-F'T TRANSITION CURB (SEE DETAILS)

ORIGINATING BENCHMARK:
HSE 26
HSE DISC IN CONCRETE SET ON THE EAST SIDE OF OLIO ROAD, 100'±
NORTH OF THE BACK OF CURB OF THE NORTH ENTRANCE TO FALL CREEK
INTERMEDIATE SCHOOL AND 25'± EAST OF THE BACK OF WALK WHICH
RUNS ALONG OLIO ROAD.
ELEV: 838.42 (NAVD 88 DATUM)

TEMPORARY BENCHMARKS
AS SHOWN ON SURVEY

REFER TO GENERAL NOTES SHEET FOR MORE INFORMATION INCLUDING THE FOLLOWING: (EXISTING LEGEND, BENCHMARK INFORMATION, AND SPECIFIC GENERAL PLAN NOTES.)





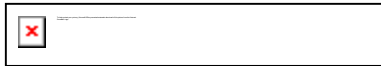




Vukusich, Megan

From: noreply@formstack.com
Sent: Wednesday, October 5, 2022 1:21 PM
To: Vukusich, Megan
Subject: Public Meeting Comment Form

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.



Formstack Submission For: **Public Meeting Comment Form**

Submitted at 10/05/22 1:20 PM

Name:	kim cook
Address:	13595 e 114th st fishers, IN 46037
Email:	kimlcook@msn.com
Subdivision or business name:	Cedarstone
Is this comment regarding City Council redistricting??:	No
Please select the meeting to which you would like to submit a public comment:	Plan Commission Meeting
Meeting Date:	Oct 05, 2022
Project Name/Resolution Number:	RZ-22-4 Magnolia Grove Salon
Comment:	1. The size of the structure is too big (9000 sq ft) 2.the zoning classification should not be changed to commercial

from residential

3. It is more than a 1000 ft from the intersection of 116th and Olio as designed by the PUD for any commercial. Which was reinforced when it was agreed upon for the Nature Area put in by Kroger, designating the end of the commercial area limit that the city and commission agreed to.

4. the traffic management at this area is already a problem

These are just a few of the reasons that we feel this rezoning should not be granted

Would you like to receive email communications and updates from the City of Fishers?:

Yes

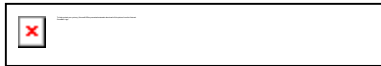
Copyright © 2022 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

Vukusich, Megan

From: noreply@formstack.com
Sent: Wednesday, October 5, 2022 10:23 AM
To: Vukusich, Megan
Subject: Public Meeting Comment Form

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.



Formstack Submission For: **Public Meeting Comment Form**

Submitted at 10/05/22 10:22 AM

Name:	Angela Mattingly
Address:	13487 E 116th Street Fishers, IN 46037
Email:	angela@envisionideas.com
Subdivision or business name:	Spencer Subdivision - directly across the street from proposed development
Is this comment regarding City Council redistricting??:	
Please select the meeting to which you would like to submit a public comment:	Plan Commission Meeting
Meeting Date:	Oct 05, 2022
Project Name/Resolution Number:	Case # RZ-22-4 - Consideration of a rezone of 1.76 acres from R2 to C2 (or C1?)

I object to rezoning 13484 E 116th Street from R2 to commercial (C1 or C2 - the documents related to this project list both) for several reasons:

Comment:

(1) Traffic is already backed up in this area due to all the commercial development at the corner of 116th and Olivo plus the residential developments further east. Adding a large commercial development with nearly 60 parking spaces would make traffic in this area even more unmanageable.

(2) When Kroger expanded, the pond and nature area were to be the buffer between the commercial and residential area. The City of Fishers agreed that this was the buffer. Why are we looking into a carve out for commercial in the middle of an area zoned as residential?

(3) In addition to the buffer mentioned above, PUD decisions in the early 2000's state that the limit for commercial is 1000 feet from the corner of 116th and Olivo. This is not within that agreed upon area.

(4) Let's fill up the buildings already sitting empty in commercial areas of Fishers before adding more in areas that the City of Fishers has already agreed would remain residential.

Thank you for your time.
Angela Mattingly

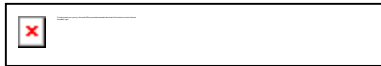
Would you like to receive email communications and updates from the City of Fishers?:

Yes

Vukusich, Megan

From: noreply@formstack.com
Sent: Friday, September 30, 2022 3:02 PM
To: Vukusich, Megan
Subject: Public Meeting Comment Form

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.



Formstack Submission For: **Public Meeting Comment Form**

Submitted at 09/30/22 3:02 PM

Name:	Jacquelyn Thompson
Address:	13429 East 116th Street Fishers, IN 46037
Email:	jthompson2235@yahoo.com
Subdivision or business name:	116th Street/ Magnolia Grove Salon
Is this comment regarding City Council redistricting??:	No
Please select the meeting to which you would like to submit a public comment:	Plan Commission Meeting
Meeting Date:	Oct 05, 2022
Project Name/Resolution Number:	RZ-22-4

Comment:

When the expansion of Kroger was approved the green space just east of this land was intended to be the buffer between commercial and residential. Allowing a rezone of this property puts commercial activity on the west side of the agreed upon buffer. With the addition of Cornerstone Lutheran Church, Kroger, Starbucks and increased development on the east side of fishers, traffic on this particular area of 116th is already unmanageable. Adding any additional commercial activity in this area is unwise.

Would you like to receive email communications and updates from the City of Fishers?:

Yes

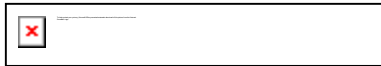
Copyright © 2022 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

Vukusich, Megan

From: noreply@formstack.com
Sent: Tuesday, November 1, 2022 1:39 PM
To: Vukusich, Megan
Subject: Public Meeting Comment Form

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.



Formstack Submission For: **Public Meeting Comment Form**

Submitted at 11/01/22 1:38 PM

Name:	Donna Bond
Address:	13555 E. 114th St. Fishers, IN 46037
Email:	jerrybond@mac.com
Subdivision or business name:	Cedarstone
Is this comment regarding City Council redistricting??:	No
Please select the meeting to which you would like to submit a public comment:	Plan Commission Meeting
Meeting Date:	Nov 02, 2022
Project Name/Resolution Number:	RZ-22-4

Comment:

Strongly object to request to Rezone from residential to commercial based on a concern for public safety.
Kindly request the Plan Commission members consider the negative impact on traffic. The hair salon. owners expect to have 23 stylists. If each stylist would have 4 clients daily (this is a low estimate), that would mean 92 cars would enter the salon daily. This estimate does not include cars of staff members or delivery vehicles. Most likely at least 80% of the cars would be forced to make a U-Turn in front of Cedarstone Lane if driving east on 116th St. This area is already congested, especially during rush hour traffic. Recommend disapproval of the request. Why make an already dangerous traffic area even more dangerous?

Would you like to receive email communications and updates from the City of Fishers?:

Yes

Copyright © 2022 Formstack, LLC. All rights reserved. This is a customer service email.

Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

Vukusich, Megan

From: Angie Mattingly <angela@envisionideas.com>
Sent: Monday, April 17, 2023 2:39 PM
To: Vukusich, Megan
Cc: 'Andy Mattingly'; chris.cooke@cookefg.com; 'Jacquelyn Thompson'; 'Tim Mattingly'
Subject: Neighborhood Meeting - April 18

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.

Megan,

I am not able to attend the neighborhood meeting on 4/18 at 4pm but wanted to send my concerns regarding the proposed Magnolia Grove property.

My primary concern is the amount of traffic a salon with 23 stylist stations will generate in the area. I live directly across from the property in question so can speak to the traffic volume from daily experience. It is not uncommon to wait a full 5 minutes to turn right (east) out of my driveway. Anytime I need to go west, it requires a U-turn. Other drivers on 116th Street {understandably} do not appreciate the U-turns because it can slow down traffic on 116th Street or make it hard for people to turn left onto and out of Cedarstone Lane. There are only a few homes without a curb cut in this section of 116th Street so very few drivers need to make regular U-turns. Nearly everyone coming to the salon will need to make a U-turn to enter the salon parking lot or a U-turn to return home. This is roughly 23 people doing this every hour the salon is open. This does not include salon staff, deliveries, etc. Cars will be backed up trying to get out of the salon parking lot and then will be backed up trying to make U-turns. This is a congested area with a ton of traffic and adding all these U-turns is dangerous.

My other concerns are related to the size and hours of the proposed salon. I spoke with a salon owner who confirmed that it will be very difficult to find 23 stylists to fill the stations. If a salon business of that size is not sustainable, what will be done with the building? Regarding hours of operation, if this is a business model where each stylist rents space and runs their own business they will set their hours. There could be traffic coming in and out 7 days a week 7am to 9pm (or whatever hours they choose). This use and intensity is not conducive to previous agreements with the City of Fishers about retail/commercial establishments west of the Super Kroger.

I understand it is unlikely that a person would buy this property and put a residential home on it; however, any businesses that are established west of Moore Dentistry need to look like a home and be less traffic volume and business hours than the proposed development. There is a long history with this corner and the City of Fishers needs to stand by the agreements made all along and as recently as 2021 (FISHERS FUTURE LAND USE DOCUMENT – page 19: <https://www.fishers.in.us/DocumentCenter/View/26139/Fishers-2040---Land-Use>). It is unfortunate that we continue to have to revisit these agreements.

Thank you for your time,
Angie Mattingly
13487 E 116th Street

Vukusich, Megan

From: Andy Mattingly <Andy.Mattingly@forumcu.com>
Sent: Monday, April 17, 2023 5:24 PM
To: Vukusich, Megan
Cc: chris.cooke@cookefg.com; 'Jacquelyn Thompson'; 'Tim Mattingly'; Baumgartner, Megan; Angela Mattingly
Subject: Magnolia Grove April 18 Meeting Comments
Attachments: Magnolia Salon Parking Illustration.docx

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.

Hi Megan,

Unfortunately I will be out of town on Tuesday, April 18 and yet I wanted to share my concerns, questions and comments on this project.

Scope of project

- The only project outside of the Commercial mound is Moore Dentistry at this very vital and busy intersection for East Fishers. There are significant differences between these two entities:
 - Size 7,000 sq ft for MG versus 5900 sq ft for Moore
 - Parking spaces 57 for MG vs 24 for Moore
 - Visitor counts 23 for MG vs 8 max for Moore. MG could have triple the number of visitors and MG could be open 7 days per week with longer hours
 - Access for MG could require a u-turn to access or when leaving, Moore Dentistry has L&R access plus an area to stack
 - Please see attached parking illustration
- The size of this project also has me concerned for what will be further uses for the building.
 - When discussing with Commercial Realtors in the area, they indicate this is a very large construction build for only a salon purpose long term.
 - What guarantees or restrictions are in place to keep even heavier traffic businesses from this location?
 - Having experience in the commercial development field, I do understand income from a commercial building is important. During construction or even 1 – 2 years later retro fitting for new tenants is not a barrier.

Design and fit outside commercial barrier

- The latest illustration of the proposed design doesn't seem to fit the planning team's recommendation that the building needs to have a residential look and presence given its location outside the commercial mound.
- The Moore dentistry building is an example of a residential design that allows the merging of residential and commercial outside the barrier for transitioning purposes.
- Given the large scope of the planned facility (even though it was reduced from the very first proposal) it would very difficult to have a residential design especially for the stated purpose.
- I do realize that this parcel is highly unlikely to be residential and a commercial use that is low traffic and has a residential design would be the best use for this parcel.
- I believe if the design needs to have a residential look and that outside the mound transitioning into residential areas, including those south of the project, then business purpose is important part of that development strategy.

Safety and Traffic concerns

- Even though this location offers right in and out, I feel an important component was missed. Patrons for a salon will be traveling from both directions and will make u-turns at some point of their visit.
- Given the high number of booths, there is a very high likelihood people will be stacking on 116th to make u-turns having a direct impact on traffic flow on 116th St especially given the current heavy traffic.
- This will be an impact to more than the 4 residents on the South, this stacking will greatly impede Cedarstone Lane residents too as they look to exit either direction.
- It seems that having high traffic commercial uses inside the mound helps funnel traffic to designated entry and exit points and provides less risk to drivers and pedestrians.
- Outside the mound, commercial uses such as the dentist office or low traffic businesses offer better safety and pose less traffic congestion risk.

Thank you for the opportunity to express my concerns and for the time and effort in finding a solution in the best interest of the city including those of us who are part of the city in this area.

Andy Mattingly
13487 E 116th
Fishers IN, 46037

From: Chris Cooke
To: Wukosch, Megan
Cc: Elizabeth Cooke; Andy Mattingly@forumcu.com; Tim Mattingly; Jacquelyn Thompson; Freddie McCurs; lauraworld@mac.com; Joseph Bond; Jerry Bond
Subject: FW: Magnolia Grove -- Proposed rezone west of 116th and Olio, Dec 7 Plan Commission agenda
Date: Tuesday, February 28, 2023 12:34:09 PM
Attachments: image001.png
image002.png
image003.png
image004.png

EXTERNAL SENDER: Please exercise increased caution. Do not open attachments or click links from unknown senders or unexpected email messages.

Megan, thanks in advance for your help on these items. Chris Cooke

1. Please include my email (below) in the record for the revised Magnolia Salon proposal (April Plan Commission agenda).
2. Can you email me any info on the "new" version of the Magnolia salon as it becomes available? We hear some changes were made, but have not seen anything yet.
3. Farr Property on 116th -- If your department receives a proposal for the Farr property (13562 E. 116th -- next to Moore Berry Dentistry) I would appreciate you adding this email in the Plan Commission's information packet.
4. If a Farr property request is received, please email/forward any proposed plans to me as they become available (or let me know how to request them).
5. The Farr property currently has a very large sign picturing a two story, multiple tenant office building. I would note that all 116th and Olio PUDs have height limits and square footage limits for this corner, and green space requirements.
6. There is currently a 6' construction fence all the way around the Farr parcel. The fence is blocking the sidewalk -- you have to walk in the street to get around the fence. Is this allowed? (and it is really ugly too.....)

Thanks again, Chris

From: Chris Cooke, CIMA®
Sent: Wednesday, November 16, 2022 5:18 PM
To: petersonp@fishers.in.us; stollers@fishers.in.us; zimmermant@fishers.in.us; hstevenson@legalgroup.com; dawn.lang@me.com
Cc: coblec@fishers.in.us; weingardt@fishers.in.us; Scott Fadness <scott@scottfadness.com>
Subject: Magnolia Grove -- Proposed rezone west of 116th and Olio, Dec 7 Plan Commission agenda

Fishers Plan Commission, Fishers City Council, Mayor Fadness,

Magnolia Grove salon is back for a second round of meetings in front of the plan commission (116th St, west of Olio Rd), and in the near future there is likely a proposal for the Farr property (same part of 116th/Olio). The original staff report recommending approval of the Magnolia Grove Salon (Plan Commission agenda for December 7, 2022) suggested that "only this single parcel is under discussion" and that the rest of the 116th and Olio corner should not be considered (i.e. the Kroger Marketplace PUD/SuperKroger). We believe that is incorrect, ignores past precedent regarding this corner, and that any zoning in this area MUST include the history of the Olio/116th St zoning process, the NW corner Olio/116th PUD documents, their approval process, and various commitments made by Fishers personnel and area developers. **These commitments are public record and discussed in the Fishers Town Council YouTube video from March 3, 2014. Fishers Town Council, 3/3/2014, First Reading for SuperKroger at 116th and Olio Rd (35 min -- 46 min)** <https://www.youtube.com/watch?v=HzqdoLN7ezQ> (35min mark to the 46 min mark)

Historical Note: 116th and Olio corner has had approximately 100 public meetings over the last 20 years with attendance including well over 200 residents from the area, various developers, and Fishers' personnel as seen/heard in the video. Newer members of the Plan Commission and Fishers City Council may not remember the hundreds of hours of work by area residents, developers, and Fishers personnel and the 100+ meetings before reaching these various agreements and commitments. VIDEO/AUDIO history will assist our current plan commission members when discussing upcoming rezoning requests on this corner.....please listen to the 2014 Fishers Town Council Member's words in the video below (including Mayor Fadness and others!). I also suggest opening the Closed Caption (CC) so you can see their words (some audio is hard to hear).

Fishers Town Council, 3/3/2014, First Reading for SuperKroger at 116th and Olio Rd (35 min -- 46 min)
<https://www.youtube.com/watch?v=HzqdoLN7ezQ>

1. **Video evidence of zoning commitments** -- Fishers Town Council member Stuart Easley opens the discussion and talks about this area and the extensive zoning history. The Video includes discussion of the 116th and Olio Super Kroger (Kroger Marketplace PUD) when brought to Fishers Town Council for first reading (RIGHT NEXT TO MAGNOLIA SALON PROPERTY and the pending FARR PROPERTY). Various Town Council members talk about this corner. You very clearly hear at least **TWO COMMITMENTS** noted by various Fishers Town Council members at this PUBLIC MEETING. There are also slides in the presentation documenting these commitments.
 - a. The amount of total retail/commercial square footage at 116th and Olio was to be strictly limited.
 - b. The distance the retail/commercial would extend from the corner of 116th and Olio would be limited to 1400 feet.
 - c. There are height, lighting, and other restrictions in the PUD as well.
2. **Fishers Residents justifiably BELIEVED and RELIED UPON these commitments** from our Fishers Town Council, documented in the Kroger Marketplace PUD, and agreed to by all parties. Commitments were made at various public meetings and specified the limited distance that retail would be allowed to creep from the Olio corner. These commitments are public record giving notice to future developers (like Magnolia Grove) of the square footage and distance limits. This is especially important when the commitments came over many years (2003 -- present), during about 100 public meetings relating to the 4 corners of this intersection, and between various Fishers representatives, developers, and over 200 residents of this area (see #3).
3. The colorful, detailed Fishers Future Land Use Map (adopted in 2021) found on page 19 of the Fishers 2040 Land Use document ratifies the history of this corner and these commitments. <https://www.fishers.in.us/DocumentCenter/View/26139/Fishers-2040---Land-Use>. This recently adopted map designates the SuperKroger fence/pond as the western edge of the commercial district (1400 feet per the PUD), and designates the proposed Magnolia Grove property as RESIDENTIAL/RZ. **Residents have a right to rely upon this recently adopted map.**
4. The Fall Creek Community Organization (**FCCO**) represented over 200 residents of Fall Creek Township from 2003 to about 2015. The **FCCO** actively worked with Fishers and local developers to make this 116th/Olio corner special and achieve better zoning outcomes. **FCCO** reached agreements on buffers between commercial and residential, commercial square footage limits, and maximum distance from the intersection. The **FCCO** was present at every Plan Commission and Town Council meeting for over 10 years. Note: FCCO disbanded after the 2014 SuperKroger zoning as we believed the zoning was well defined on all 4 corners of the intersection and all negotiations with developers and the Town/City of Fishers on this corner were completed.
5. Currently there is a single dentist's office on the **OUTSIDE** of the COMMERCIAL MOUND/FENCED area. This dental office "use and intensity" should set the MAXIMUM INTENSITY precedent for any commercial use allowed on the OUTSIDE of the commercial mound/fence area. Also, commercial uses farther from the corner should be LESS INTENSE as we go to the west. The most intense uses should be inside or next to the mound commercial area. Dentist's Office is approx. 5000 sq ft, 7am -- 7pm weekdays only, 25 parking spaces, about 6-8 customers per hour, and strongly resembles a single family home. (Magnolia Grove is originally proposed as a 9000 square foot, 23 stylist salon, PLUS a dog washing business, over 57 parking spots. Expected customers would be 25 to 30 per hour at this type of facility). WAY TOO INTENSE VERSUS THE EXISTING PRECEDENTS (DENTIST BUSINESS) and the zoning history on this corner.

THANK YOU TO OUR PLAN COMMISSION AND CITY COUNCIL FOR REVIEWING THIS IMPORTANT HISTORY OF THE 116th and OLIO RD. CORNER.

Chris Cooke

ADDITIONAL INFO IF NEEDED REGARDING THE TOWN COUNCIL MEETING/VIDEO

Screenshots and transcripts of the 3/3/2014 Fishers Town Council meeting are shown below. These items may further assist your understanding of this 116th and Olio corner and its zoning history.

TRANSCRIPT OF VIDEO --

<https://www.youtube.com/watch?v=HzqdoLN7ezQ> -- Fishers Town Council, 3/3/2014, First Reading for SuperKroger at 116th and Olio Rd, 35 min -- 46min >> 3 agenda items related to proposed SuperKroger at 116th & Olio (#10, 11, 12)

35 min -- Stuart Easley -- the next 3 items (10/11/12) relate to planned SuperKroger -- Stuart offers his historic perspective -- "the whole corner of Olio/116th has much history with the residents and much planning in the original PUD. **David George** also on Plan Commission at the time. Developers and residents spent many meetings to get aligned on limiting retail square footage per acre and limits on commercial area etc and this petition deviates from that. *This deviates substantially from past agreements.* Stuart not interested in 1st reading because of this prior alignment. Suggest no first reading per Stuart as this new proposal violates the spirit of the area and existing PUD. And the longstanding alignment of the residents and the town and existing developers.....send a clear signal about the intent of the town.....extensive work on size, scale, type, distance from intersection, etc. Plan Commission is public hearing, then it could come back to Town Council if passes Plan Commission. Historical context -- neighborhood retail, limited size, distance, etc all agreed upon....."

Scott Fadness -- Adam give a summary, and then have council weigh in.

Adam Zach(?)..... -- plan dept -- intro of location, changes requested are noted

Stuart Easley -- "Noting that since original meetings there are all new faces in the planning department and they may not know the history....long public input process."

Adam -- discusses annexing 6.8 acres of property, access rights on 118th st, and rezone from R2 to PUD-C. demo old Kroger, build new Kroger, amend existing PUD, **LIMIT AS TO HOW FAR RETAIL COULD EXTEND.** Many clauses memorializing what Stuart Easley is referring to. Adjust numbers to make all bigger. **Notes limit of 1000 ft. Need to extend to 1400' limit.** Taller buildings, max parking adjusted. Outdoor displays changed.

Scott Fadness -- recommends NO first reading on rezone/PUD and tabling the annexation.

Stuart Easley -- Plan Commission come back with (can't hear this??)

Pete Peterson -- Motion to table annexation, no 1st reading on rezone or PUD amendments (unanimously approved)

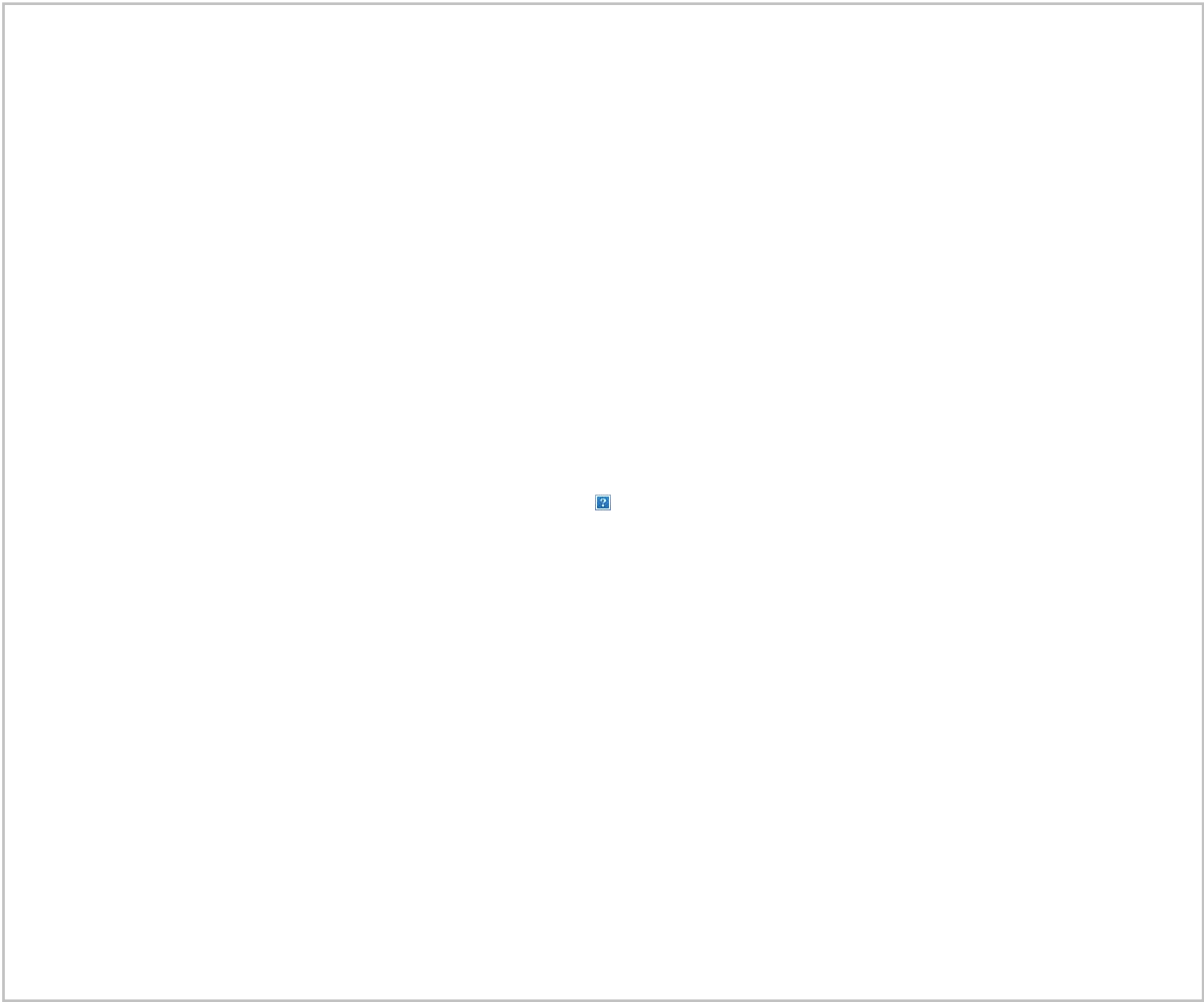
New Member on Council (name?) -- I appreciate Stuart and David's comments on this and it misses the vision of the PUD. I align with Stuart and agree with lots of time spent on these existing plans.

Pete Peterson -- thanking Mr Cooke for showing up and Pete agrees with Stuart's comments.

David George -- I remember all of this area. Different developers, but all aligned. I REMEMBER RETAIL SQ FT PER ACRE AND DISTANCE FROM THE INTERSECTION. (limits on commercial -- WHERE THE LINE WAS/WILL BE). Both sides came to agreement on it.....

3 Pictures below are captured from the video's presentation slides.....

1. Red square around proposed SuperKroger area including new parcel at center of discussion.
2. New parcel being annexed and rezoned, and distance from center of intersection modified from 1000' to 1400'. (Magnolia is WEST of this parcel and OUTSIDE THE 1400' LIMITS SET BY THIS PUD AND ZONING PROCESS).
3. PUD amended language including a 1400' limit on commercial. (Magnolia would not be within these limits).



Thanks for reading this far, and thanks for your consideration,

J. Christopher Cooke, CIMA®

Partner

Direct: (317) 814-7810 | Chris.Cooke@cookefg.com

9340 Priority Way West Drive

Indianapolis, IN 46240

www.cookefg.com



Registered Representative of and securities offered through Sanctuary Securities, Inc., Member FINRA, SIPC. Investment Advisor Representative of Cooke Financial Group. Cooke Financial Group is a DBA of Sanctuary Advisors, LLC, a SEC Registered Investment Advisor. This e-mail message is intended only for the use of the individual or entity to which the transmission is addressed. Any interception may be a violation of law. If you are not the intended recipient, any dissemination, distribution or copying of this e-mail is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the document.

ORDINANCE NO. 091922C
AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF
THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA

This is an ordinance to amend the Official Zoning Map incorporated into the Unified Development Ordinance (“UDO”) for the City of Fishers (the “City”), previously enacted by the City pursuant to its authority under the laws of the State of Indiana IC 36-7-4 et seq., as amended.

WHEREAS, the City’s Plan Commission has conducted a public hearing on May 3, 2023 for case RZ-22-4 as required by law in regard to the proposal to amend the City’s Official Zoning Map to designate the real estate identified on Exhibit A, attached hereto and incorporated herein (the “Real Estate”), as within the C1 Commercial zoning district with conditions; and

WHEREAS, the Plan Commission at its May 3rd, 2023 meeting sent a _____ recommendation to the Fishers City Council by a vote of ____ in favor and ____ opposed; and

WHEREAS, to support its long-term vision for the City, the Council desires to adopt certain amendments to the Official Zoning Map.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA, AS FOLLOWS:

Section 1. Declaration. The City’s Official Zoning Map is hereby amended to designate the Real Estate as within the C1 Commercial zoning district with the following conditions:

- 1) That the property owner voluntarily annex into city limits;
- 2) Hours of operation be limited to 8am to 8pm, Monday through Saturday. Closed on Sundays;
- 3) All lighting fixtures shall be full-cut off, with a zero-foot candle lighting level at the property line; From 10pm to 8am, lighting shall be limited to the amount required for security purposes only;
- 4) Uses are limited to the following: Office, medical office, beauty/hair salon, day spa, nail salon; and
- 5) The building and site design shall be substantially similar to the plans included as Exhibit C, including a parking lot with a maximum of 49 parking spaces.

Section 2. Purpose and Intent. The purpose and intent of this text amendment is to support the City’s long-term vision for the City.

Section 3. Approval. This amendment shall become effective upon its adoption and publication in accordance with Indiana law. Development of the Real Estate shall be governed entirely by

ORDINANCE NO. 091922C

the provisions of the C1 Commercial zoning district with conditions and the provisions of the UDO.

SO ORDAINED by the Common Council of the City of Fishers, Indiana, on this ____ day of _____ 2023.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

ABSTAIN

	John Weingardt, President		
	Cecilia Coble Vice President		
	C. Pete Peterson, Member		
	Brad DeReamer, Member		
	Selina Stoller, Member		
	Todd Zimmerman, Member		
	Jocelyn Vare, Member		
	Crystal Neumann, Member		
	David Giffel, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the _____ day of _____, 2023 at _____ p.m.

ATTEST: _____

Jennifer L. Kehl, Fishers City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038



ORDINANCE NO. 091922C

"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." Lindsey Bennett

Exhibit A

Legal Description of Real Estate

PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 18 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN, FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE NORTH 00 DEGREES 09 MINUTES 04 SECONDS EAST 208.71 FEET ALONG THE EAST LINE OF SAID QUARTER QUARTER SECTION TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DUE WEST 208.71 FEET; THENCE NORTH 00 DEGREES 09 MINUTES 04 SECONDS EAST 208.71 FEET; THENCE DUE EAST 208.71 FEET TO THE EAST LINE OF SAID QUARTER QUARTER SECTION; THENCE SOUTH 00 DEGREES 09 MINUTES 04 SECONDS WEST 208.71 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

ALSO:

PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 18 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN, FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS. FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE DUE WEST (ASSUMED BEARING) 208.71 FEET ALONG THE SOUTH LINE OF SAID QUARTER QUARTER SECTION; THENCE NORTH 00 DEGREES 09 MINUTES 04 SECONDS EAST 208.71 FEET; THENCE DUE EAST 208.71 FEET TO THE EAST LINE OF SAID QUARTER QUARTER SECTION; THENCE SOUTH 00 DEGREES 09 MINUTES 04 SECONDS WEST 208.71 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 18 NORTH, RANGE 5 EAST, HAMILTON COUNTY, INDIANA, AND BEING A PART OF THE LAND OF INSTRUMENT NUMBER 9909939439, OFFICE OF THE RECORDER MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 55 MINUTES 54 SECONDS EAST (ASSUMED BEARING) 1,320.97 FEET ALONG THE SOUTH LINE OF SAID SECTION TO THE POINT OF BEGINNING OF THIS DESCRIPTION BEING THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER-QUARTER SECTION: THENCE NORTH 89 DEGREES 55 MINUTES 54 SECONDS WEST 208.71 FEET ALONG THE SOUTH LINE OF SAID SECTION TO THE SOUTHWEST CORNER OF THE GRANTOR'S LAND; THENCE NORTH 0 DEGREES 11 MINUTES 55 SECONDS EAST 50.00 FEET ALONG THE WEST LINE OF THE GRANTOR'S LAND; THENCE SOUTH 89 DEGREES 55 MINUTES 54 SECONDS EAST 208.71 FEET TO THE EAST LINE OF SAID QUARTER-QUARTER SECTION; THENCE SOUTH 0 DEGREES 11 MINUTES 55 SECONDS WEST 50.00 FEET ALONG THE EAST LINE OF THE SAID QUARTER-QUARTER TO THE POINT OF BEGINNING AND CONTAINING 0.240 ACRES, MORE OR LESS.

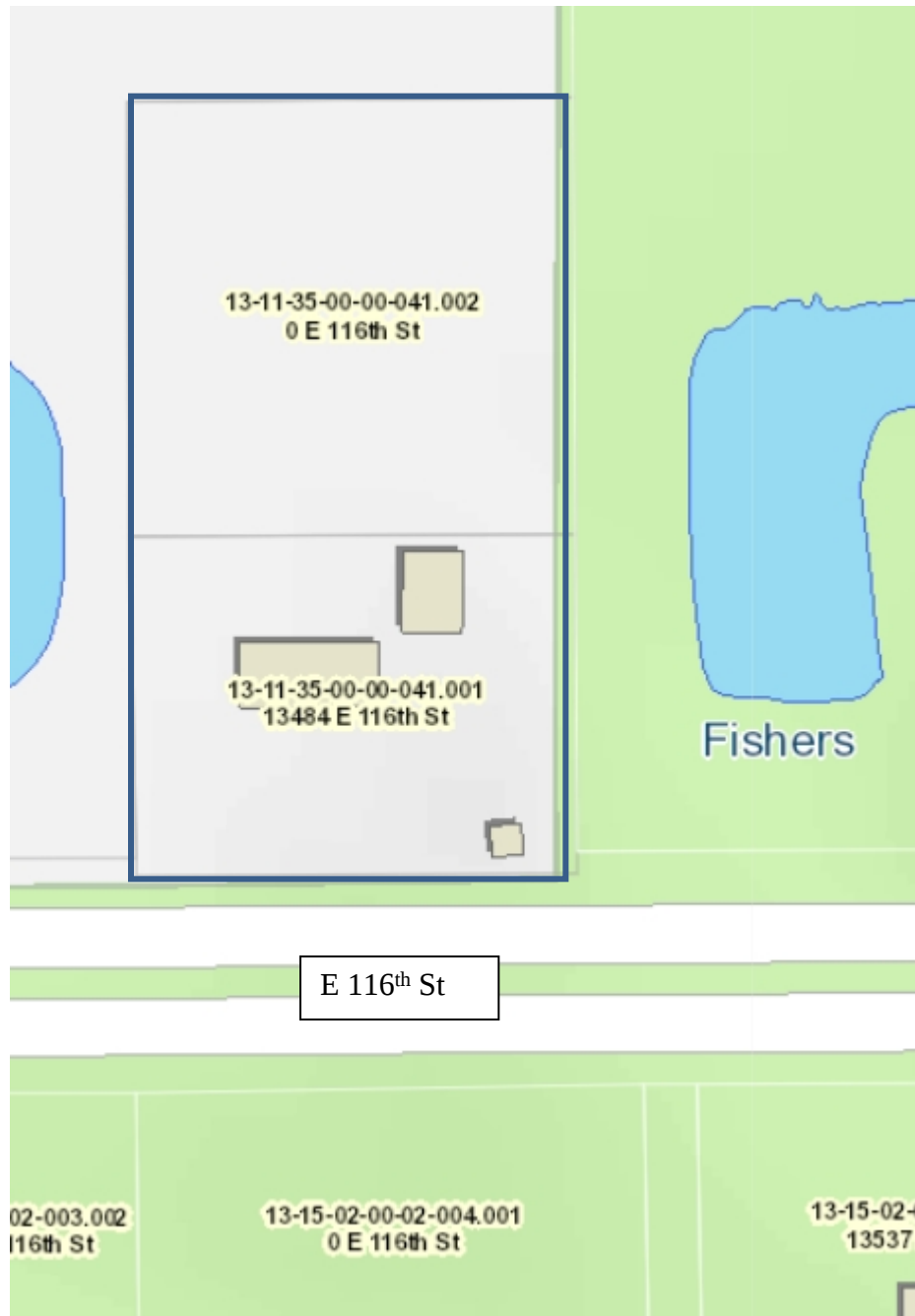
ORDINANCE NO. 091922C

13484 E 116th St

13-11-35-00-00-041.001

ORDINANCE NO. 091922C

EXHIBIT B



13484 E 116th St
13-11-35-00-00-041.001

ZONING HISTORY:

The city has been helping neighborhood homeowners' associations (HOAs) with amending their covenants and restrictions to help manage investment companies purchasing homes in their neighborhoods. We have heard from neighborhoods that it is challenging to meet the high percentage requirements that are set in their covenants to be able to make changes.

The city is bringing forward an amendment to the Unified Development Ordinance (UDO) that would require any new HOA to limit the percentage of votes required to make an amendment to governing documents by a simple majority vote for items involving approving budgets, changes to HOA operations, and changes to rental restrictions. All other covenants, conditions, and restrictions would require a 75% consenting vote to change.

Below is the existing state statute related to this topic.

IC 32-25.5-3-9Amending governing documents; consents required

Sec. 9. The governing documents must contain a provision allowing the owners to amend the governing documents at any time, from time to time, subject to the following:

- (1) The declarant's consent to an amendment may be required if:
 - (A) the declarant owns one (1) or more units within the subdivision; and
 - (B) not more than seven (7) years have passed since the original governing documents were first recorded.
- (2) The consent of the owners to the amendment has been obtained as evidenced by either of the following:
 - (A) The vote of the owners at a meeting duly called for the purpose of considering the amendment.
 - (B) A written instrument signed by the owners.

The governing documents may not require that the consent of more than seventy-five percent (75%) of the owners is required for consent under this subdivision.

(3) If the consent of first mortgage holders is required, only first mortgage holders that provide an address to the secretary of the board must be notified. The consent of a first mortgage holder must be indicated in a written instrument signed by the mortgage holder. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request. The governing documents may not require that the consent of more than seventy-five percent (75%) of first mortgage holders eligible to receive notice is required for consent under this subdivision.

(4) Notwithstanding subdivisions (1) through (3), the governing documents may require the approval of at least ninety-five percent (95%) of the owners to convey common areas or to dissolve the plan of governance for the homeowners association.

As added by P.L.141-2015, SEC.11. Amended by P.L.164-2016, SEC.6.

SUMMARY OF PUBLIC COMMENTS:

A public hearing was held at the Advisory Plan Commission March 1, 2023 meeting. At the meeting we heard from several stakeholders:

- Residents/HOA Reps – Supportive of amendment but brought up additional issues HOAs have with conducting regular business.

- Developers/Builders – Concerns with how this amendment would impact development of subdivisions.

Meeting with developers/Builders – Staff held a meeting on March 21, 2023 to discuss the amendment with builders and BAGI. Revisions have been added to the amendment to address their concerns.

HOA Virtual Town Hall - Staff held a virtual town hall on March 27, 2023 at 7:30pm. 22 participants were on the call.

A second public hearing was held by the Plan Commission on April 12, 2023. At the meeting we heard from an additional stakeholder, Tom Murray with Eads Murray & Pugh who represents several HOAs in Fishers. He suggested language to the amendment that has been incorporated into the latest draft.

PETITION OVERVIEW:

Below is a summary of the revisions we are proposing with this text amendment.

- Definition for governing documents
- Voting for condo associations
- Addressing quorum percentage requirements, especially for larger neighborhoods.
- Allowing for amendments to governing documents related to HOA operations and rental restrictions to be a simple majority of members.
- Definition of HOA operations
- All other amendments to CC&Rs may be approved by no more than 75% vote of members.
- Amendments to governing documents as described here to not take effect until the certificate of occupancy has been issued for the last home in the neighborhood.
- Added language that aligns with state law for subdivisions that take longer than 7 years to build out.

STAFF RECOMMENDATION:

When making their decision, Plan Commission shall be reasonable regard to:

1. The Comprehensive Plan;
2. Current conditions and the character of structures and uses in each zoning district;
3. The most desirable use for which the land in each zoning district is adapted;

4. The conservation of property values throughout the jurisdiction; and
5. Responsible development and growth.

Staff recommends Plan Commission send a **favorable recommendation** to City Council. This item is anticipated to go to City Council on May 15, 2023, for final reading.

STAFF RECOMMENDATION

☒ Favorable Recommendation ☐ Unfavorable Recommendation ☐ No Recommendation

ORDINANCE NO.
AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF
THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA

This is an ordinance to amend the Unified Development Ordinance (“UDO”) for the City of Fishers (the “City”), previously enacted by the City pursuant to its authority under the laws of the State of Indiana IC 36-7-4 et seq., as amended.

WHEREAS, the City’s Plan Commission has conducted a public hearing on _____ for case _____ as required by law in regard to the text amendment; and

WHEREAS, the Plan Commission at its _____ meeting sent a _____ recommendation to the Fishers City Council by a vote of ____ in favor and ____ opposed.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA, THE SUCESSOR IN INTEREST TO THE TOWN OF FISHERS, PURSANT TO IND. CODE 36-4-1 ET. SEQ., THAT THE ZONING ORDINANCE, A PART OF THE COMPREHENSIVE PLAN AND ORDINANCES – 2018, ORDINANCE NO. 071618F, AS AMENDED, IS HEREBY AMENDED AS FOLLOWS:

Section 1. AMENDMENT. This Text Amendment amends certain sections of the Unified Development Ordinance;

Section 2. PURPOSE STATEMENT. The purpose of this ordinance is to add regulatory language in the furtherance of the overall Purpose & Intent provisions of Section 1.2.2. (UDO Introductory Provisions).

Section 3. CHANGES TO THE UDO REGULATIONS. The following sections of the UDO regulations shall be changed, as follows:

Sec. 7.1.5 Owner’s Association Governing Documents and Covenant Standards

A. Applicability

This section specifies covenants required between the City and the owners’ association (such association or entity being referred to herein as an “HOA”) that is established independent of a residential development’s Declaration of Covenants instrument. Any residential development that has common area or any other area, facility, or amenity that is to be owned and/or maintained by the owner’s association shall record a legally binding covenant instrument applicable to each property owner and parcel within the development.

L. Amending Governing Documents

ORDINANCE NO. _____

In addition to the requirements above and the requirements of Indiana Homeowners Association Act found at Ind. Code 32-25.5-3 et seq. which provisions are applicable to all HOAs established after June 30, 2009, the Governing Documents of any HOA (consisting of its Declaration of Covenants, Conditions and Restrictions or similarly titled document, its Articles of Incorporation and its Code of By-Laws) concerning the operation and maintenance of such open space, common area and amenities, as well as the Governing Documents of the HOA themselves, must contain provisions allowing the owners of parcels of property subject to such Governing Documents to amend such Governing Documents at any time, and from time to time, and subject to the following:

1. Each “member” of an HOA for this purpose shall be an owner, in fee simple, of each parcel of property subject to such governing documents concerning such parcel, and each such “member” shall be entitled to one vote per parcel of property so owned. However, if the HOA is for a condominium community and if the members have Percentage Interests that are not equal but rather are based on the size of the condominium units as set forth in the Governing Document, those Percentage Interests shall be applicable to determine the voting rights of the members.
2. When the development company is drafting the Governing Documents, special attention should be directed to the percentage of members that will constitute a quorum for purposes of conducting the annual meeting or a special meeting of the members. Factors to be considered should include the total number of parcels planned and type of community planned. The goal is to set a realistic quorum so that the HOA can conduct business at its meetings including matters such as the election of Directors and the approval of the annual budget.
3. In accordance with Ind. Code 32-25.5-3-9, the governing documents of the HOA must contain a provision allowing the members to amend the governing documents at any time, from time to time and such amendment may not require the consent of more than seventy-five percent (75%) of the members. However, pursuant to this Ordinance, any amendment to the Governing Documents specifically involving changes relating to “HOA Operations” and rental restrictions may not require the consent of the members owning more than fifty percent (50%) of the total number of parcels. For purposes of this provision, “HOA Operations” pertain to matters that are normally addressed in an HOA’s By-Laws such as the quorum for membership meetings, the date of the annual meeting, the number and eligibility of Directors, the length of terms for the Directors, the Officers, the use of proxies, notices required to be given for annual meetings and special meetings of the members, and the location of membership meetings. “HOA Operations” is not intended to apply to provisions such as use restrictions or architectural requirements.
4. Until a certificate of occupancy has been issued on the last parcel of property subject to the Governing Documents of the HOA owned by the declarant pursuant to the original Governing Documents, amendments to the Governing Documents as provided in 3. above shall require the consent of the declarant, regardless of the approval of the other members. In accordance with Ind. Code 32-25.5-3-9, the declarant’s consent to an amendment may be required if:
 - A. the declarant owns one (1) or more units within the subdivision; and

ORDINANCE NO. _____

B. not more than seven (7) years have passed since the original governing documents were first recorded

5. HOAs are encouraged to allow member participation through virtual meetings and electronic voting.

ORDINANCE NO. _____

SO ORDAINED by the Common Council of the City of Fishers, Indiana, on this ____ day of _____ 2023.

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY		NAY	ABSTAIN
	John Weingardt, President		
	Cecilia Coble Vice President		
	C. Pete Peterson, Member		
	Brad DeReamer, Member		
	Selina Stoller, Member		
	Todd Zimmerman, Member		
	Jocelyn Vare, Member		
	Crystal Neumann, Member		
	David Giffel, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the _____ day of _____, 2023 at _____ p.m.

ATTEST: _____

Jennifer L. Kehl, Fishers City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

"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." Christopher P. Greisl

