

The Madison County Plan Commission on the above date at 9:30 A.M. with Bill Maxwell, President, presiding.

Members Present: Bill Maxwell, Paul Wilson, John Randall, Jr., Alan Esche, Mark Gary, John Orick, and Wesley Likens.

Members Absent: Scott Tischler and Brad Newman.

Also Present: Michael Hershman, Executive Director. Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

### **Current Business**

1. Roll call was taken and two members, Scott Tischler and Brad Newman were absent.
2. The minutes of the preceding meeting were distributed to each member prior to the meeting. Mr. Likens made a motion to approve the minutes with the corrections as stated. Mr. Randall seconded the motion. The vote was unanimous in favor of the motion.

Mr. Maxwell said, I talked to the petitioner and we thought we would go first to Petition #504 first and the petitioners for the Petitions #483 and #484 agreed with that. So, we will hear Petition #504.

The board then went to item 1, under New Business, Petition #504.

### **New Business**

**1. Petition #504 of Daniel & Danielle Penticuff to rezone property from CR to AG to permit the filing of a special use exception for an office/workshop for a tree trimming & landscape business.** This property is located on the north side of Co. Rd. 1050S approx. 1/2 mile east of SR-13 in Green Twp. and containing 8.131 acres, more or less.

Mr. Hershman said, fields, with scattered houses characterize the surrounding area. The site has several barns and a house.

Staff has received proof of proper notification.

The applicant has been running the business from the property for several years without either the proper zoning or approvals. The application is the result of a violation complaint the office received. Staff has received reports of dumping, burying and burning of trash on the site.

The request amounts to a down zoning of the property. There is no AG zoned property in the vicinity.

This is the first step in the process, if the Board of County Commissioners approves the request, the applicant will have to apply for a special use for the business.

The Technical Review Committee forwarded a recommendation for denial at the meeting November 21, 2006 meeting.

Daniel and Danielle Penticuff and their attorney, Terry Monday were present representing this request.

Terry Monday said, I am here representing the Penticuff's. They reside at 8332 W 1050S.

They are requesting to down zone from CR to Agricultural. Then they will also need a Special Exception.

The petitioners have had this property for several years. There are scattered house in the area but most of the surrounding ground is used for agricultural proposes.

They are not conducting busy on site. There will be no nurseries, no customer on site, and no landscaping on site. This will be only for the storing of their equipment, no business will be conducted on site. There are several employees that will come to the site to park and pick up equipment to take to the job site.

They have street sweeping equipment where they clean the streets for subdivisions. They do landscaping for golf courses. This would be much like the storage of farm equipment. The only way this came to light that there was a business operation was through a violation letter.

They did not realize they were in violation of any zoning laws and up on finding this out they immediately went to the Plan Commission office in order to straighten the matter out.

Danielle Penticuff told the board this is not just a business site it is their home.

Mrs. Penticull said, we purchased the property in 2001. We have cleaned the property up and have made a lot of improvements.

We have this business before we moved to this location and when we move here we had no idea you couldn't operate your business on your own property. As soon as we found out we immediately tried to get it rectified.

The existing barns we use for storage for the equipment and to do maintenance on them. No customers come to the site. Our guys come in, clock in, and go to the job site and then come back, clock out and go home.

Most of the barn area is used for maintenance. There is some equipment in the barn and some is outside of the barn. Most stuff that is seasonal we store at another location.

We work for a lot of the subdivision, cleaning their streets and not for the general public.

Mr. Hershman was asked what was the nature of the complaint.

Mr. Hershman replied, trash, derby, junk and the business being operated at this location and some burning.

Mr. Penticuff said, the burning was from cleaning the fencerows. Cleaning them out. Nothing from the job site was ever burned or buried at this location.

Mr. Monday said, if you look at the western boundary of the property there is an earth berm and then on the east side of the property there is fencing that screens the property so the neighbors on each side can't actually see the operation.

Mrs. Penticuff said, everything that is stored outside is either behind the landscape berm or the other privacy fence.

In the wintertime we have anywhere from three to five employees and in the summer up to ten. Right now we have about four.

Mr. Monday said, we really try to have a plan that will work with the neighbors and with the community in general. They have done a lot to make this work and they will be willing to accept any conditions placed on them to try and be good neighbors.

Mrs. Penticuff said, the waste product that comes about from the tree trimming, most of that is left on site. What we have brought to our site is tree trunks and line them up in the back on the property. In the wintertime that is cut up for firewood. If we sell any of it we deliver to who purchases it. We sell no mulch and we do not bury any of this on site.

Dick Stroud, 8905 W 100S.

Mr. Stroud said, my concern today is, I am not opposed to this request but I am concerned with open burning. I have observed smoke coming from that area. I see trucks going there in the evening and I wondered if they have dug a pit for burning or for burying. But, like I said I am opposed to any burning.

Mr. Penticuff replied that the burning was from clearing the fencerow.

Mr. Penticuff said, we do not bring anything on to the property and burn or bury it. When we moved in we have been cleaning the ground and have burn a few things in order to clean the property up.

Mr. Monday said, they would be willing to agree to as a condition that there will be no burning.

Greg Valentine, Green Township Trustee and Assessor.

Mr. Valentine said, I do taxes for the Penticuff's so I know them. They have cleaned the property up. I would like to see the burning cease but that is the only concern that I have. They are good neighbors. There are at least three other businesses along that road.

Mr. Shine informed the board concerning other businesses in the area, each one would be considered on its own merit. When they moved there the land was zoned agricultural. In 2002 when the zonings were changed countywide their property and the surrounding properties were then zoned to CR.

Mr. Monday said, my understanding of the memorandum is, there will be no open burning on the site and no burial of debris on the site. When this is submitted to the Commissioners the memorandum of understanding will be attached. We also realize that if this is approved we will still have to go through the appeals process.

No adjoining property owners that were notified by mail were present today. Also, the person that filed the complaint is not present today.

Mr. Esche said, I make a motion to send Petition #504 of Daniel & Danielle Penticuff to rezone property from CR to AG to permit the filing of a special use exception for an office/workshop for a tree trimming & landscape business to the Commissioners with a favorable recommendation based on the fact that I am against the Findings of Fact recommendation and they have agreed to make the exception of the no burying, no burning on the property.

Mr. Orick seconded the motion.

The vote was six yes; Likens, Wilson, Randall, Gary, Esche and Orick. One no; Maxwell. The motion carried. **Petition #504 of Daniel & Danielle Penticuff to rezone property from CR to AG to permit the filing of a special use exception for an office/workshop for a tree trimming & landscape business will be forwarded to the County Commissioners with a favorable recommendation.**

The board then went back to items, 3 and 4 under Current Business

### **Current Business**

Mr. Hershman said, for purposes of discussion we can hear discussion on both petitions and the vote on them separately.

**3. Petition #483 of Scott Family Farms, landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products.** This property is located on the northeast corner of Co. Rd. 500S and Ridgeview Road in Fall Creek Twp. and containing 55.969 acres, more or less.

Mr. Hershman said, as both staff reports are pretty much the same I will read one report for both.

Mr. Hershman said, the surrounding area is residential with a mix of fields. The site is a field.

The attorney for the applicant had asked that the request be tabled at several hearings.

The Technical Review Committee forwarded a recommendation for approval at it's September 19, 2006 meeting.

As per the representatives:

- 1) The hours of operation will be from 7am-5pm, Monday-Saturday. However, there will be times when work will continue until midnight.
- 2) There will be 10 employees.
- 3) It will take 10-12 years for the mining to play out.
- 4) There will be no processing at the site.
- 5) The material will either be trucked or conveyed over to the existing site for processing.
- 6) The applicant will be submitting a generalized reclamation plan for the site.
- 7) The applicant has agreed that the site will be for mineral extraction only.

Proper notification has been given.

Gordon Byers, Attorney for Irving Materials, and Doug Layman, Regional Manager for Irving Materials, were present representing the petitioners.

Mr. Byers said, Scott Family Farm became available as it is going through an estate. Irving Materials owns several parcels in the area. IMI owns about 80 acres in the immediate area that is not part of this parcel. When preparing for this we discovered the property had been rezoned from agricultural to CR when the new zoning ordinance went in to affect. So instead of getting a special exception for this we first have to obtain rezoning to the agricultural and then proceed on to obtain the special exception.

I just handed out some commitments. In the process of rezoning we've eliminated all the other uses except extraction. in the General Industrial. We are only going to extract on this site. There will be no processing on this site.

On the west side there has since the early 60's been a stone operation. There has been blasting to remove the stone that's in place. To the south will be the extraction of sand and gravel. If this is approved we anticipate starting the process in four years. The time period would be to go from north to south would depend on demand. This could be a ten-year process.

What we would do then is turn those two parcels in to a lake. We would start at the north and transport the product, sand and gravel, to cross either by conveyors or trucks, across property that we own on Ridgeview Road, back over to our processing on the west side.

In four years, sand and gravel, what happens is, we will come in and strip overburden and we create mounds and plant trees. They are regulated through industry standards on set backs, on dust and noise and any type of air pollution. It is typically a wet operation so we strip the dirt create the mounds where it's hard to see and create a big wet --- that will be reclaimed pursuant to the document that I tendered to you that articulates the standards on reclamation on how we reclaim this thing.

With respect to mineral extraction the State of Indiana, we do here because this is where the product is. This where sand and gravel is. The 80 acres that IMI owns to the south of these two pieces, there's not any sand and gravel. It is particular to these two parcels here, sand and gravel. The law in the state basically says, if your in a non urban area, which we are, the law says, you may not as a Planning Commission or as a unit of government preclude extraction of mineral, which is what we are proposing to do at this site.

The reason we are doing this here is, it is no where else. We do however think it's important to respect the property rights of others in the vicinity and that's why we commit to these reclamation standards with reclaiming the size as well as the buffering and the mounding and the planting of trees around the site.

Again, the commitments try to eliminate that it is just an extraction site and we have to go through this complex rezone to get to that. Those are commitments that would be appropriately executed and signed and recorded and would bind IMI or any future owner on this site.

We have met with some property owners that would be immediately impacted in the immediate vicinity, and if they have any questions we would respond to them.

It is a simple rezoning of real estate that's immediately adjacent to an operation --- we picked this location because that's where the product is. The zone classification was a recommendation from the Plan Commission staff.

In the future we may acquire some of the other properties in the vicinity and these operations could be completely touching one another. There are four or five homes in the immediate area that separate these two proposed sites.

As far as trucks going down the road, we own property to the north so we have a route to the north and we also have a route to the south from these two sites. There won't be much truck traffic, as we will go through IMI to get to 67.

Lot number one with the house on it we own. The other five houses we do not own. The gas line comes in between our property and his house. That will help truck traffic, as it is a straight line to the entrance that we want to use.

Again, there will be no processing. We will remove first sand and gravel, and stone could be removed 30 years out. I gave you a commitment. Mineral extraction, sand, gravel and stone, that's all I am saying I can do on these two pieces. Nothing else under your General Industrial. I have eliminated processing and all the other uses in your General Industrial and I can only do one thing out there and it's mineral extraction.

The process is, we remove overburden, dredge to eliminate water, get down to where there is stone and the only way to remove stone is blasting. We are heavily regulated on blasting. We are regulated by the State of Indiana. We blast about 25 times a year. We typically notify people when we blast. We have seismographs that measure the movement of air and ground. If we have complaints we do act on them accordingly.

Anthony Candieno said, I am here representing my grandparents and myself. They own land that runs parallel on the east of the proposed land. I live next to them.

I got the staff recommendation and out of the five criteria there is only half that passes. This area was just rezoned and it seems silly to rezone it to something else.

We just learned that instead of looking at this for ten years we are going to be looking at it for 30 years.

I am concerned it there has been any kind of environmental study done. There has to be a boundary placed on what they can and cannot do. This is a rural area. For the health of my family and the safety of my family and the ground that my family has lived on for 96 years, is it the best thing for us?

As far as blasting goes, my grandmother called them 25 years ago and has yet to hear from them. This is not a good location.

I am concerned with, property values going down, the quality of water, noise from the conveyor belts and the high-tension wires.

There are many other locations in Indiana for them to utilize. We do have a lot of concerns. Once you dig this ground you can't put it back.

Dale Needleman was present representing the Flagship Enterprise at 2701 Enterprise Drive.

Mr. Needleman said, Flagship Park is a certified technology facility. It is designed to bring in high tech businesses to Madison County.

Flagship has a number of clients that use sensitive equipment. During these blasting periods the clients have notice the window shaking and are very concerned as to what that does to their equipment. This becomes another concern if there is additional blasting.

Approving this for more extraction would include more blasting. We feel this would lose part of the sales ability of that space and the intent to bring these companies in to benefit the county.

We were told that we would be notified when blasting would occur and that has not happened as of yet.

We don't want any additional blasting. We are concerned about any blasting getting stronger or closer to the land for development. And we have received no notification of such.

Jeff Hawhee was present.

Mr. Hawhee said, I live at the southeast corner of the property.

We are concerned with, no notification of blasting, property values going down, noise, dust, and traffic. I would rather see houses go in. I see no benefit from this to my family or myself.

Mrs. Mark Mundhenk, 1535 W 500S.

Mrs. Mundhenk said, we on the south from the property.

We are concerned with the blasting, noise, our wells could be in jeopardy, dust and the notification of blasting is no good. I would rather see homes go in.

We have cracks in our house from the blasting.

Carol Kincaid, 616 Imy Lane was present.

Mrs. Kincaid presented to the board a list of remonstrators.

Mrs. Kincaid said, we are concerned with the affect on the well, the blasting and the affect it is having on selling our home. We have cracks in the walls, there is structural damage as well.

Mr. Shine said, for the record, there are two pages which Mrs. Kincaid submitted and on that there is one person who was not opposed and the rest are opposed, except for one that had no response.

Pete Higginbottom, 4679 S Ridgeview Road was present.

Mr. Higginbottom said, my land and my sons land adjoins the IMI property. I built a house there nine years ago and I have never called IMI concerning their blasting that they haven't responded right away. I have no cracks in my house. It has not bothered my well water.

I just want to say I am not opposed to this. IMI has talked to me about buying my ground so you could say I have a finical interest in this. I would rather not see 300 houses go in.

Mr. Byers said, we are not going to do anything with this new operation that would stop him from farming that land. As to the water table, the packet that I handed out, we are strictly liable. If we damage any structures we are also liable for that. We are regulated by the State of Indiana with respect to blasting. You are in a non-urban area here, that's why the State law says, you may not deny the landowner the right to extract in a non-urban area. We are proposing too and are committed to extract gravel and sand and to do no processing.

Again, blasting is regulated. Conveyors do not make noise that's more audible than 50 feet away. What they hear is the processing plant not the conveyors. There is a need for sand and gravel. The power line will not be moved. We received six votes in favor and one against this at the Tech Review meeting.

Mr. Layman said, there are some things that we can do basically in the dark hours. We could run the strobe light on the machines and that would take away from the backup alarm. But they are not permitted during the daylight hours. The noise is from the processing plant and not the conveyors.

We are regulated by the DNR concerning water and we do quarterly water samples. We are required to put barriers up. That is part of the law.

Mr. Candieno said, we have heard nothing from anybody not matter how many times we call concerning the blasting. The only thing notification does is, I know my house is going to shake.

Julie Hawhee said, nobody wants this. The stone quarry is no good. We would see housing go in and not this.

Mrs. Mundhenk said, we have a concern with them building a wall around the property. I am still concerned with the water table in the area.

The board was informed that most of the surrounding properties are either CR or R2.

Mr. Byers said, this is a non-urban area and by statue case law of Indiana is per square mileage and not so much residential housing. So, this is a non-urban area. So, it says there are minerals there that can be extracted.

Mr. Shine said, if this would be approved by the Plan Commission, we as a Planning Commission may place some stipulations between the Planning Commission and the Board of Zoning Appeals on the operation.

The statute states that if there are minerals in a non-urban area then those may be extracted. I don't think the definition for non urban or urban has been established as of yet.

Mr. Higginbottom informed the board the only reason he and his son are selling their land is because of health issues. We don't have any problems with IMI.

Mr. Hershman read his Finding of Facts in to the record.

1. Petition #483: Does the proposal comply with the Comprehensive Plan?  
No, the area is designated for residential build out. There is not adequate infrastructure to the site.
2. Would the proposed classification be consistent with current conditions, the character of current structures and uses in the immediate districts:  
Fields, houses and the existing mining characterize the surrounding. The proposed GI/General Industrial zoning would be consistent with the existing mining operation in the near vicinity. However, it is out of character for the existing residences and field that characterize the remaining parts of the surrounding area.
3. Would the proposed classification be consistent with the most desirable use for which the land is adapted?  
No, the land is adapted for fields and housing.
4. The proposal substantially conserves property values throughout the jurisdiction:  
No, the expansion of the mining would harm adjacent property values.
5. The proposal is reasonable in regard to responsible development and growth?  
No, the property does not have public sewer and water. Further, the comprehensive plan has the area as residential build out.

**Staff Recommendation:**

The request should be denied. It does not meet the requirements set for approval in State Law and the Ordinance. It is not in keeping with the Comprehensive Plan. The site doesn't have a connection either public sewer or water, which is a requirement for the GI zoning district. It is not in keeping with the character of the surrounding area. Staff is concerned about the negative impact on the surrounding area. Finally, staff is concerned about the precedent that granting the rezoning would set.

Mr. Hershman said, this also applies to Petition #484.

Mr. Shine said, from a legal standpoint sewer and water is not a strong issue for either side to rest any acts on.

Mr. Byers said, what I would be willing to modify the permit to say, if the rezone took place we would extract at this point in time sand and gravel from these two sites. If at some time in the future we made a decision to remove stone, we would have to come back before either the Plan Commission, the Commissioners or the Board of Zoning Appeals. We could live with that undertaking as a condition. We can make a voluntary commitment that would be recorded that would say, we would take sand and gravel only from these two sites. After proper notice at the proper hearing it would give you the jurisdiction at some point in the future to make a decision whether stone could be removed from these two parcels of real estate. Stone removal is the only

blasting that would be done. Again, a commitment would be written that no stone extraction from these two parcels of real estate until a petition to modify the commitment to filed, and the only question is, if does this go straight to the BZA or back to the Planning Commission and then back to the Commissioners in fourteen years out. The burden of proof would be on us. The commitments will be recorded and will be binding on IMI so whoever owns that property will have the burden to convince this body at some point in the future it should be modified.

I think between now, if your comfortable with condition, we can put it in writing the issue that has been brought up and that you are concerned with.

Mr. Wilson said, my problem is, when something is in writing and signed off and willing to be recorded and is part of the process as far as the Board of Commissioners is concerned in their decision capacity and this rezoned, then we will be on a lot better footing here as to what we are telling these folks here that the future of their neighborhood is going to be.

Mr. Byers said, I am trusting that we can write that document and Mr. Shine can review it. It's got to be modified. It's at your discretion to modify it. If you don't mortify it we've got no appeal.

Mr. Wilson said, do you want a vote on it in here, right now, with this board not seeing it or do you want to delay it long enough for you to prepare that document to bring it to this board so their decision it predicated upon the actual agreement before it's carried forth to the Board of Commissioners?

Mr. Byers said, I am at your discretion but I have got a time restraint on the end of private property. I've almost got to do this by January. I can live with you saying no recommendation to the Commissioners because the Commissioners are going to be the ultimate arbitrary of this. I can live with you having heard this, you could issue an opinion of no recommendation and then you can wait for this written document that Mr. Shine reviews and you review to make it you authority. That keeps me moving. If you say I have to come back in January I will be back but I am just saying I've got a time restraint.

We could also meet with the neighbors as to what type of mounding and the placement of a mounding they would like to see there.

Mr. Esche said, I move that we table Petition #483 of Scott Family Farms, landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products to the next meeting so that the petitioner can prepare the documents that we have discussed and the Planning commission members at that time can review said documents, approve them, reject them and then act upon this matter.

Mr. Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #483 of Scott Family Farms, landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products has been tabled until the January 2007 meeting.**

**4. Petition #484 of Irving Materials, Inc., landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products.** This property is located on the northeast corner of Co. Rd. 500S and Ridgeview Road in Fall Creek Twp. and containing 62 acres, more or less.

Mr. Escher said, I move that we table Petition #484 of Irving Materials, Inc., landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products to the next meeting so that the petitioner can prepare the documents that we have discussed and the Planning commission members at that time can review said documents, approve them, reject them and then act upon this matter.

Mr. Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #484 of Irving Materials, Inc., landowner, and Gordon D. Byers, petitioner, to rezone property from R2 to GI for extraction of aggregate products has been tabled until the January 2007 meeting.**

2. Miscellaneous: After some discussion by the board, Mr. Wilson made a motion, seconded by Mr. Likens to approve the MCPC calendar for 2007. The vote was unanimous in favor of the motion.

Mr. Hershman said, our building inspector, Kyle Gottschammer, turned in a letter of resignation. He has moved to the city of Lawrence. We will be in the process of looking for someone to fill that position.

Mr. Wilson made a motion, seconded by Mr. Likens to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 12:42:30 P.M.

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Bill Maxwell, President

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Beverly Guignet, Secretary