

ORDINANCE NO. 2017-18-CM
AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF TIPPECANOE
COUNTY, INDIANA, TO REZONE CERTAIN REAL ESTATE
FROM A TO RE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
TIPPECANOE COUNTY, INDIANA:

Section 1: The Unified Zoning Ordinance of Tippecanoe County, Indiana, being a separate ordinance and not part of a unified county code is hereby amended to rezone the following described real estate situated in Tippecanoe Township, Tippecanoe County, Indiana

See attached legal description

Section 2: The above-described real estate should be and the same is hereby rezoned from A to RE.

Section 3: This ordinance shall be in full force and effect from and after its adoption.

(Adopted And Passed) (Denied) by the Board Of Commissioners of Tippecanoe County, Indiana, this 2 day of October, 2017.

VOTE:

yes

Tracy Brown
Tracy Brown David Byers, President

yes

Tom Murtaugh
Tom Murtaugh Tracy Brown, Vice President

Thomas Murtaugh
Thomas Murtaugh, Member

ATTEST:

Robert Plantenga
Robert Plantenga, Auditor

DWE BYERS

LEGAL DESCRIPTION

Part of the southwest quarter of Section Sixteen (16), Township Twenty Four (24) North, Range Four (4) West in Tippecanoe Township, Tippecanoe County, Indiana being more completely described as follows, to wit:

Commencing at the northwest corner of the southwest quarter of Section 16-24-4, said corner being marked by a stone; thence North $89^{\circ}-54'-31''$ East along the north line of said quarter section a distance of 1302.70 feet to the northwest corner of the northeast quarter of said quarter section, said corner being marked by a rebar; thence North $89^{\circ}-54'-31''$ East along said north line a distance of 99.53 feet; thence South $0^{\circ}-34'-14''$ West a distance of 342.53 feet; thence southwesterly along a tangent curve to the right (said curve having a radius of 182.99 feet, a chord length of 69.76 feet and a chord bearing of South $11^{\circ}-33'-31''$ West) an arc distance of 70.19 feet to the point of beginning of the herein described tract; thence South $89^{\circ}-29'-43''$ East a distance of 231.01 feet to a capped rebar; thence South $0^{\circ}-05'-01''$ East a distance of 899.95 feet to a railroad spike on the south line of the northeast quarter of said quarter section; thence South $89^{\circ}-57'-38''$ West along said south line and along the approximate center line of County Road 725 North a distance of 327.53 feet to the southeast corner of the northwest quarter of said quarter section, thence South $89^{\circ}-57'-38''$ West along the south line of the northwest quarter of said quarter section and along said approximate center line a distance of 411.31 feet to a railroad spike; thence North $3^{\circ}-58'-56''$ East a distance of 323.18 feet; thence northeasterly along a tangent curve to the right (said curve having a radius of 151.65 feet, a chord length of 74.60 feet and a chord bearing of North $18^{\circ}-13'-54''$ East) an arc distance of 75.37 feet; thence North $32^{\circ}-28'-52''$ East a distance of 105.79 feet; thence northeasterly along a tangent curve to the right (said curve having a radius of 371.25 feet, a chord length of 90.79 feet and a chord bearing of North $39^{\circ}-30'-17''$ East) an arc distance of 91.02 feet; thence North $46^{\circ}-31'-43''$ East a distance of 417.61 feet; thence northeasterly along a tangent curve to the left (said curve having a radius of 182.99 feet, a chord length of 76.03 feet and a chord bearing of North $34^{\circ}-32'-18''$ East) an arc distance of 76.59 feet to the point of beginning, containing 12.032 acres.

THE

Area Plan Commission

of TIPPECANOE COUNTY

20 NORTH 3RD STREET
LAFAYETTE, INDIANA 47901-1209

(765) 423-9242
(765) 423-9154 [FAX]
www.tippecanoe.in.gov/apc

SALLIE DELL FAHEY
EXECUTIVE DIRECTOR

September 21, 2017
Ref. No.: 17-312

Tippecanoe County Commissioners
20 North 3rd Street
Lafayette, IN 47901

CERTIFICATION

RE: **Z-2696--R. GREGG SUTTER (A to RE):**

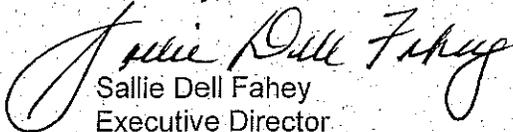
Petitioner is requesting rezoning of a 12.032 acre tract located in the "Abby Marle" parcelization/development in order to divide it into three lots in the proposed Abby Marle Rural Estate Subdivision (RE-0068). The site in question is located at the northeast corner of CR 725 N and Abby Marle E, more specifically, 7301 Abby Marle E, Tippecanoe 16 (SW) 24-4. CONTINUED FROM THE AUGUST APC MEETING AT PETITIONER'S REQUEST

Dear Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on September 21, 2017 the Area Plan Commission of Tippecanoe County voted 9 yes - 2 no on the motion to rezone the subject real estate from A to RE. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their October 2, 2017 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,



Sallie Dell Fahey
Executive Director

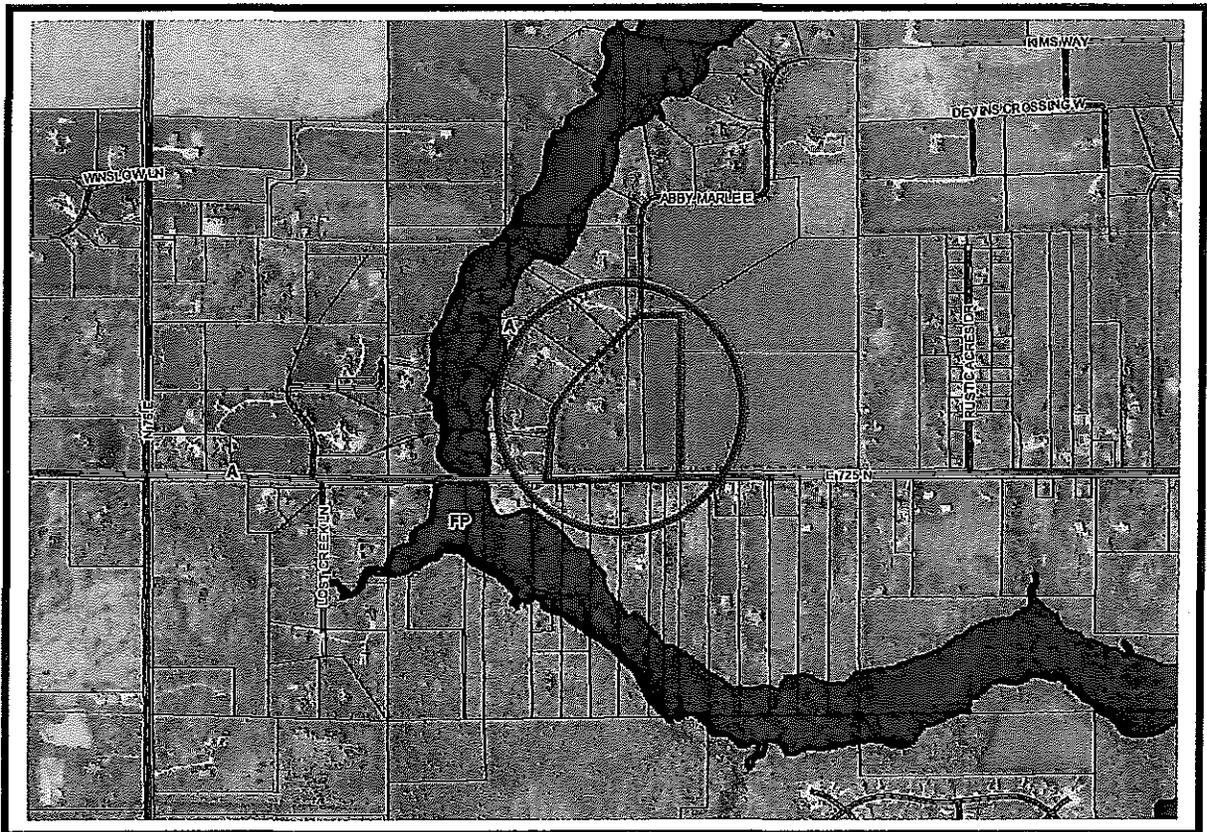
SDF/lmu

Enclosures: Staff Report & Ordinances

cc: R. Gregg Sutter
Vester & Associates
Mike Wolf, Tippecanoe County Building Commissioner

Z-2696
R. GREGG SUTTER
(A to RE)

STAFF REPORT
July 17, 2017



Staff Report
July 19, 2017

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, who is the owner, (represented by Jim White of Vester and Associates) is requesting a rezone from Agricultural to Rural Estate for a 12.032 acre tract located on the north side of CR 725N about ¾ mile west of SR 43 North. A 3-lot rural estate subdivision, called Abby Marle Rural Estate, is proposed as an expansion of the existing residential development (also called Abby Marle). The site is located at 7301 Abby Marle East, in Tippecanoe 16 (SW) 24-4.

QUALIFICATION OF LAND:

Aerial photography from 1998 to the present day demonstrates that this acreage has not been mechanically harvested in that time period. The site contains a single-family home, lawn and associated landscaping. With three lots proposed on 12.032 acres, the overall density is one dwelling unit per 4.01 acres, meeting the rural estate requirement of not more than 1 dwelling unit per 2 acres. Also, each lot is greater than one acre. The nearest sanitary sewer utility is Battle Ground's which cannot serve the proposed development because of distance and natural impediments.

ZONING HISTORY AND AREA ZONING PATTERNS:

The land in this request is zoned A, Agricultural and has been since the inception of zoning in the unincorporated county. FP (Flood Plain) zoning associated with the North Fork of Burnett Creek is located west of the site across Abby Marle East.

AREA LAND USE PATTERNS:

A large-lot single-family residence has occupied this site since the early 1990's when this housing development was created through a series of parcelizations and subsequent "sliding" of building rights (AKA "sliders"). This resulted in 17 home sites along Abby Marle East, a private drive. This 12 acre tract represents a tract that could not be reduced in size because all division rights have been used. The proposed subdivision would create a lot for the existing home in addition to two new lots. Dozens of other single-family homes surround this site, mainly along CR 725 N.

TRAFFIC AND TRANSPORTATION:

The *Thoroughfare Plan* classifies CR 725 N as a rural local arterial. Traffic counts taken in 2016 indicate that around 1,000 vehicles pass this site daily. The sketch plan shows the required 30' half-width right-of-way for dedication to the public. A relatively short

rural estate road, a requirement of rural estate land divisions, is shown accessing Abby Marle East, a private drive created with previous parcelizations.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

As required, these lots will be served by individual on-site sewage disposal systems (septic) and water wells. Soil borings have not yet been reviewed by the Health Department; these borings will occur before primary approval of the subdivision.

STAFF COMMENTS:

The site itself complies with all of the requirements for a Rural Estate rezone request. It is located over ½ mile from sanitary sewer and none of the land has been mechanically harvested for the past 18 years. The proposed layout meets the minimum standards regarding density and lot area.

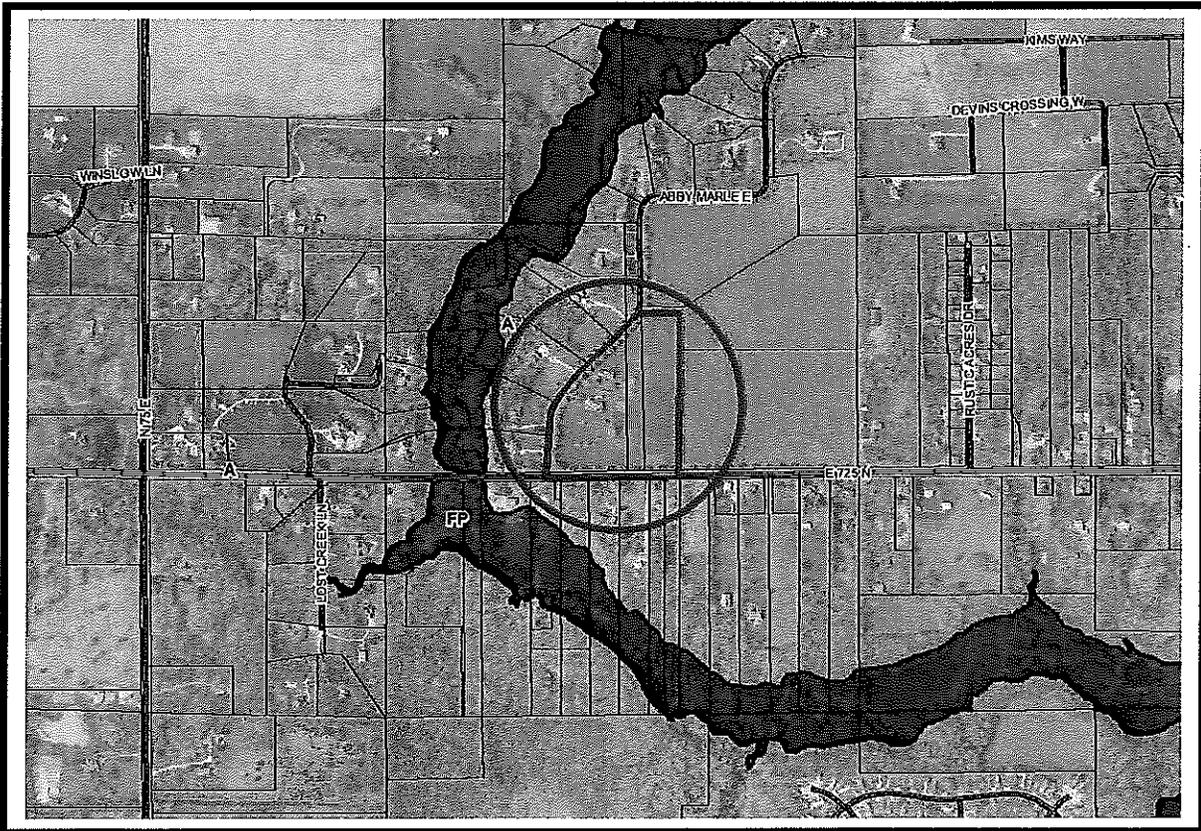
This portion of the county has retained its rural zoning pattern even though little of the area is in farm production. Large lot residences and wooded land is typical within nearly a mile of the site in all directions. Single-family homes dominate this part of Tippecanoe Township and staff can support the creation of two additional homesites.

STAFF RECOMMENDATION:

Approval

Z-2696
R. GREGG SUTTER
(A to RE)

2ND ADDENDUM
September 14, 2017



At the July APC meeting, several residents spoke against this rezone petition stating that the land was part of the Abby Marle housing development and subject to certain private restrictions and covenants. After the meeting, staff researched the deed for this 12 acre tract and found covenants that contain a restriction that states tracts "shall not be further subdivided, parcelized or developed into more than one single-family building site." Since petitioner is the developer of Abby Marle, there's some question as to whether or not these covenants apply to land within the development that he owns.

According to petitioner, conversations with the residents of Abby Marle have been occurring in an effort to find a solution. APC legal counsel advised that the intent of the covenant is to prohibit land from being subdivided. However, as a private restriction it is not enforceable by any person or entity who does not own land in the development. In other words, the Area Plan Commission does not enforce these covenants; it would have to be the decision of fellow property owners in Abby Marle to take legal action. Staff's recommendation remained unchanged.

The rezone request was continued a second time at the August APC meeting. Since petitions for rezoning are only permitted two continuances, this case must be heard (or withdrawn) at the September 20th meeting. Two weeks before the September APC meeting, a revised sketch plan was submitted. This revised rural estate sketch plan shows the creation of only 2 lots instead of the original 3 lots. At this point, staff does not know if this revision is the result of a compromise between petitioner and the property owners in Abby Marle. In any event, staff continues to support this request for RE zoning.

STAFF RECOMMENDATION:

Approval

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