

**WHITLEY COUNTY ADVISORY PLAN COMMISSION
STAFF REPORT**

22-W-REZ-1 ZONE MAP AMENDMENT
Joseph Decuis Wagyu Farm, LLC
Northwest corner of 700 East and 900 South

MAY 18, 2022
AGENDA ITEM: 2

This report has been revised to reflect the revisions received on May 13. Major changes are in red.

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural
Proposed zoning: PUD, Planned Unit Development
Property area: 108 ± acres

The petitioner, tenant and owner’s agent of the subject property area, is requesting a zone map amendment for several parcels located in Section 23 of Jefferson Township, generally located near the northwest corner of 700 East and 900 South. The requested zoning for the subject property is PUD, Planned Unit Development.

Existing zoning classifications and land uses

Currently, the subject property is zoned AG, Agricultural. The current uses on the property include at least a residence, a secondary dwelling, livestock raising, crop cultivation, stabling, pastures, a bed and breakfast, and an event venue. Additionally, the westernmost 30± acres is a wooded area with a pond, trails, and a modern log cabin.

The property has had special exception approvals over the years for a Corporate Retreat (2013), Bed and Breakfast (2013), and Secondary Dwelling Unit (2017). There was also at least one variance in 2017, related to the zoning definition of bed and breakfast. Of note here, the current use of the property for a mixture of agritourism, events, small businesses, and classes, has likely exceeded a reasonable definition of a “Corporate Retreat” (although neither the code nor the BZA defines the term), becoming in some respects more like a general commercial use.

Virtually all surrounding properties within a mile radius of the subject parcels are zoned AG, excepting the Westfield Passage subdivision, which was rezoned to RR, Rural Residential, in 2019. That said, there are at least two AG-zoned major subdivisions within the same area: Big Indian Creek and Tanglewood Creek, both located to the southeast of the subject site.

Zoning code criteria

Planned Unit Developments (“PUDs”) are regulated in Indiana Code 36-7-4-1500 *et seq* and Chapter Six of the zoning code. As stated in that chapter, the intent is to “implement the comprehensive plan; [and] encourage a more creative approach in land development and site planning.”

Generally speaking, and as more defined in §6.2 of the zoning code, PUDs are special zoning districts created to meet unique needs of a particular site or development proposal. They may permit uses and modify development standards in a mix that is not easily possible using the established zoning districts. Classic examples of usage include permitting a fine-grained integration of uses (such as in downtowns) and to modify development standards for a development in lieu of seeking multiple variances.

This request is the first rezoning request to a PUD in Whitley County. However, the County has had PUDs approved in the past through a previous approval process that treated them like special exceptions. Magic Hills and Timber Ridge Addition are two examples of the legacy PUDs. In 1995, the state code standardized

PUDs as a zoning district that is reviewed by the Plan Commission and adopted by the Commissioners, with ongoing jurisdiction by the Plan Commission. Under the zoning code, a preliminary PUD consists of a text component, outlining uses and standards, and a map component, designating where the uses would apply and a general scheme of development, similar to a zoning district. A detailed/secondary PUD fleshes out the details of the preliminary standards in the form of a plan or design; this is similar to a Development Plan or subdivision plat. A detailed PUD is required to be approved within a certain time frame or the zoning for the entire PUD could lapse and then require reapproval.

While there are items to be reviewed listed in §6.4, there are currently no specific zoning code criteria for reviewing PUDs, other than the criteria for zone map amendments. The Commission should evaluate both the proposed uses and development standards as well as the placement within the proposed PUD map.

Proposed land uses and districts

The petitioner is requesting the PUD designation “establish a plan for the real estate to better allow for uses related to agritourism, preservation, agricultural uses, along with other complimentary [sic] uses that are not otherwise permitted in a strictly agricultural zoning district.” The existing uses are not proposed to be altered in any significant manner, but the change in zoning would allow for future growth of the mix of uses present on the property.

The petitioner states

“The proposed PUD is designed to:

- (a) combine essential elements of tourism and agricultural land uses;
- (b) attract members of the public to visit the agricultural operations;
- (c) to provide recreational, entertainment and/or educational experiences to visitors; and provide complimentary [sic] personal services.

The PUD will combine uses and development standards from the Whitley County agricultural and commercial zoning districts to accommodate a broad use of activities that fall under agritourism and related activities.”

The petitioner has proposed to designate five districts on the subject property: two agritourism districts and three other districts (formerly designated as Agricultural 1-3). These are described starting on page 30 of the petitioner’s submittal and shown on the District Map. This table summarizes the permitted uses in each district:

	Agritourism 1	Agritourism 2	Village	Conservation	PUD Agricultural
Bed & breakfast or other overnight accommodations	X	X	X		
Administrative offices	X	X	X		
Agritourism events	X	X	X		X
Agritourism events, limited to Weddings, photography, education, fitness, nature activities				X	
Agritourism sales	X	X	X		
Dwellings, limited to: Single-family dwelling, with more than one permitted per lot Apartments in same building as non-residential use, not to exceed 2 units per blg.	X	X	X		

	Agritourism 1	Agritourism 2	Village	Conservation	PUD Agricultural
Cabins, not to exceed 4 units				X	
Barns/workshops	X	X	X		
Agricultural production, processing, storage	X	X	X		
Vineyard	X	X	X		X
Riding stables	X	X	X	X	
Butcher shop/meat market (not including slaughtering)	X	X	X		
Complementary personal services	X	X	X		
Tree farm				X	
Wildlife habitat				X	
Overnight accommodations for guests: Non owner occupied bed and breakfast Boutique hotel not to exceed 8 rooms	X	X	X		
Reception/banquet hall	X	X	X		
Media/recording studio	X	X	X		
Events, such as family/corporate outings, private dinners, seasonal tours, weddings/receptions	X	X	X		
All other permitted uses of AG	X	X	X		X
All other permitted uses of PR (Parks and Rec.)				X	

Special exception uses of the AG and PR districts are also treated as special exceptions, subject to BZA approval, unless listed as a permitted use.

Most of the listed uses have similar definitions in the zoning code, but the following two are worth noting as being a significant basis for this PUD request.

Agritourism events is defined to include “culinary events, fundraisers, corporate events, weddings, receptions, agricultural tours, ~~music~~ **outdoor live performances**, photography shoots, **indoor** entertainment, culinary demonstrations, education programs, culinary programs, fitness events (such as running/walking) and nature related activities (such as birdwatching, monarch habitat tours, wildflower hikes) and art activities including plein air painting.” This would be subject to development standards.

Complementary on-site personal services is defined to include “chapel, fitness services and spa, special lectures and classes, nature hikes, cooking education and classes, art gallery, a garden shop, a flower shop, a gift shop, fitness center/gym, health spa, a yoga studio, a photography studio, a reception/banquet hall, a media/recording studio, crafts, food preparation and processing, gardening, ~~restaurant~~ **beverage** and food service, tasting and tap room, stage station (for walkers, runners, and bikers), corporate retreats, and other recreational uses.”

At the April meeting, discussion occurred regarding the proposed definition of “agritourism” since this PUD uses the term extensively. As proposed, it is defined as:

“An agriculturally-based commercial enterprise that is conducted for: (a) the enjoyment, education and/or active involvement of visitors; (b) raising the interest in agriculture; (c) promoting learning about how and where food is grown; (d) providing a unique culinary experience and related events; and (e) providing complementary personal services.”

This proposed definition would apply within this PUD only to describe the nature of the proposal. Administratively, it may be used when determining whether a land use that is not explicitly listed is

permissible but given the explicitness of the permitted uses list such administrative determinations should be rare.

For reference, the Indiana Code 34-31-9-2 defines, for the purposes of civil liability, agritourism activity as:

“(1) an activity at an agricultural, horticultural, or agribusiness operation where the general public is allowed or invited to participate in, view, or enjoy the activities for recreational, entertainment, or educational purposes, including farming, ranching, historic and cultural agricultural activities, self-pick farms, or farmers' markets; (2) an activity involving an animal exhibition at an agricultural fair; or (3) natural resource based activities and attractions, including hunting, fishing, hiking, and trail riding.”

The Indiana State Dept. of Agriculture definition is:

“Agriculturally-based commercial enterprises conducted for the enjoyment, education and/or active involvement of visitors. Indiana agritourism destinations raise interest in agriculture and promote learning about how and where food is grown through tours, hay rides, livestock experiences, U-Pick produce, corn mazes, gathering places, farm work activities, tastings, overnight farm stays, and the like.

Culinary tourism is the pursuit of unique localized eating and drinking experiences. By combining travel with these experiences, culinary tourism offers visitors and residents alike an authentic taste of a specific place or broader geographic area.”

The Indiana Destination Development Corporation (operator of “Visit Indiana”) defines agritourism as “the combination of agriculture and tourism.”

If the Commission desires to adopt an explicit agritourism regulation in the future, it is likely that all of these definitions, and others, will be referenced.

Development standards

The majority of the development standards of each proposed PUD district revert to the standards of the AG district, including floodplain standards, most signage, and so on.

~~The only proposed standards modification is that parking in the agritourism districts and Agricultural District 2 may be hard-surface, gravel, or “manicured grass.” Currently, the parking code requires pavement for parking areas of commercial uses. Additionally, the parking areas would be those shown on Exhibit D-1 (the map/aerial).~~

In the revisions, several development and performance standards for the Agritourism/Village Districts were added and clarified from the original proposal; the other two districts remain unchanged and revert entirely to the AG standards. The following is a summary of the new standards:

- All entertainment events are to be by appointment or invitation. General admission, i.e. “at the door,” performance events would not be permitted. Non-performance events could still be open to “at the door” ticketing or registration.
- Loudness of music performances shall be limited to 65dB at neighboring residences. 65 dB is about the volume of a normal conversation.
- Outdoor performances would end by 10 p.m. most days and 11:30 p.m. on Friday and Saturday.
- The “personal services” activities may be outdoors or within existing buildings.

- Floor area for new residences would be no less than 950 square feet (the current AG minimum) and not exceed 3,000 square feet. Floor area for new commercial buildings would not exceed 5,000 square feet. New mixed-use buildings would not exceed 7,500 square feet. Agricultural buildings are not addressed and so revert to the AG standards (which currently do not limit ag building sizes).
- Multiple personal service uses may be within one building. Similar to the events, services would be provided only by appointment or invitation and no walk up service would be provided.
- Temporary directional signs are permissible and are to be removed within 48 hours. Temporary signage is not well defined in the sign code, so this describes the petitioner's intent in that absence.
- Parking is clarified to the parking code standards, except that surface may be pavement, gravel, or grass. No parking within the county road rights-of-way is permitted. For any new buildings, the Detailed PUD plan would demonstrate the compliance with parking standards.

Additionally, the revisions include details on development of residential lots specifically in the Village District.

- Such lots would front onto the existing circle drive. The Detailed PUD/subdivision plat would have provisions for the maintenance of the drive.
- Driveways of 8' [in width] would be required
- Minimum lot width would be 100' and minimum lot area of 10,000 sq. ft.
- No minimum public road frontage would be required, but private access easements would be created between the lots and 900 South.
- No more than five residential lots would be platted.

Zoning commitments

In addition to the standards and permitted uses outlined in the proposed PUD ordinance, the petitioner plans to submit a set of zoning commitments to address further concerns that are not specifically uses or development standards. Commitments are made and adopted in conjunction with a zoning action and are enforceable like other zoning standards.

The petitioner will present any commitments at the meeting.

REVIEW CRITERIA

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

1. The most recently adopted Comprehensive Plan;

The most recently adopted Comprehensive Plan is the 2011 Plan. The 2021 Comprehensive Plan update is pending approval, and, while that document may be referenced, this criterion refers to the 2011 Plan.

The Land Classification Map of the 2011 Plan "depicts the County's land use and development form goals (land classification) in a conceptual manner. It should not be construed representing precise location of land classifications, but used as a foundation for support and influence with land use and development form decisions and zoning map changes."

So, while the precise location of the classification areas is conceptual and open for interpretation, particularly around the fringes, the location of the subject property appears to be well-within the

“Rural Residential” land classification, as is most of the surrounding area lying between 600E and 800E. The floodplain on the site would be considered “Conservation & Open Space.”

In its text, the Comprehensive Plan states the purpose of the Rural Residential classification is “to allow residential development in rural areas with large lots and large front yard setbacks.” Recommended land uses include single-family detached residential, hobby farms, crops and pastures, and forestry. Recommended development is described as protecting environmental features and that nearly all of the acreage is used for non-agricultural uses.

The Plan’s text also recommends supporting farmers’ markets as a quality of life initiative and supporting agricultural uses generally, including protecting rural character from suburban/urban development.

While agriculture and commercial ventures are generally supported by the text, this proposal does seek to create a mixed use agriculture/commercial district within an area distinctly described as being for residential. “Ag tourism” is contemplated by the Plan but is recommended to be in the Agricultural and Transitional Agricultural classifications.

For reference, looking at the 2021 draft update, the Future Character Map indicates this property as being “Town Enhancement” (e.g. light commercial or mixed use). Its intent is to “Encourage investment in existing structures where possible” and “Encourage infill development that is compatible with the existing scale and character.” Among its recommended uses are mixed use buildings, commercial, residential, cottage industry, and parks and open space, all of which are suggested in this proposal; however, the draft plan does not address agricultural uses. The textual recommendations are similar to the 2011 Plan, but it does explicitly recommend supporting agritourism in recommendation 5.7.

So, the 2021 draft plan could suggest that the current use of the property, in existence since at least 2013, may be appropriate as it recommends uses more in line with the current use and this proposal. That said, this proposal is still not fully consistent with the entire recommended classification or character of either the 2011 or 2021 document. This may be more indicative of the difficulty of defining this use at a high level rather than a discouragement of it.

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

The area surrounding this property is comprised of individual residences, subdivisions, fields, and farms.

As a method to establish and nurture the existing uses on the property in a formal way, it is not anticipated that this PUD would have additional effects on the surrounding properties. That said, if there are existing adverse effects of the current use, then it may not be an appropriate zoning change. The number of nearby property owners submitting letters of support suggest otherwise.

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

The current use of the subject property is largely what is described within the PUD proposal. This is a result of the petitioner’s development since at least the 2013 special exception approval. So, it seems that the suitability for this mix of uses has been established.

The conservation of about 30 acres of wooded land in the proposed Agricultural District 1 may have long-lasting positive effects for the petitioner and potentially for the wider community.

Long-term, as the surrounding area is developed, the desirability of the subject property may change. At which point, the PUD could be rezoned back to an appropriate standard zoning district.

4. The conservation of property values throughout the jurisdiction;

To the extent that the use of the subject property under the proposed PUD does not change from the current usage, there should be negligible effect on property values. The PUD seeks to establish the existing uses and permit a mix of uses at a scale that would be complementary and compatible to the surrounding area. While the PUD does permit a number of commercial activities, these are generally already allowable under AG with special exception approval.

5. Responsible development and growth;

The property is served by public sewer, so the growth of the proposed uses to be more extensive than currently, though still small-scale, is possible. The areas defined by the proposed districts generally limit the developability of the property; still, there may be need to create an upper limit for the permissible intensity of the proposed uses to avoid excessive effects on the surrounding area and public ways.

The proposed modification to the development standards, to permit gravel and grass parking in the locations seen in the map, may be adequate for responsible development. If the gravel and grass parking is used only for those uses that are intermittent, such as weekly reception events, the damage done to the grass and gravel would be relatively low. Pavement would need to be used for more regular uses, such as farm market and restaurants.

In terms of the proposed number, the parking code requires 1 parking space per 50 gross square feet for a public assembly building (or 1 space per 4 seats). The main reception hall area is approximately 12,500 gross square feet, requiring up to 250 parking spaces. The existing gravel area may accommodate about 34 spaces, while the grassy pasture capacity could exceed 400 spaces. The existing paved spaces throughout the facility may be sufficient for the regular uses and ADA spaces.

6. The public health, safety and welfare.

Being that the uses permitted in the requested PUD are already mostly permitted in the existing AG district, there should not be immediate change in effect on the public health, safety, and welfare. The commitment to prohibit parking on public roads would prevent a major traffic safety hazard that has arisen with another event venue in the county.

Date report completed: 5/17/22

PLAN COMMISSION RECORD OF ACTION

Motion: _____ By: _____ Second by: _____
 Favorable recommendation _____
 Unfavorable recommendation _____
 No recommendation _____
 Conditions/Commitments? _____

Vote:	Drew	Emerick	Hodges	Johnson	Kurtz-Seslar	Schrumpf	Wolf	Wright
Yes								
No								
Abstain								