

Plan Commission Meeting April 6, 2015

Jim Moore: Ok, we are getting ready to start. If you care to speak during the meeting, please sign the form at the back of the room, please. Ok, thank you. All right it is 5:30. Welcome everyone to the Town of Newburgh Plan Commission Meeting for April 6, 2015. We begin by calling the roll. Chris, if you would say your name into the microphone.

Chris Wischer.

Kris Setzekorn.

Jim Moore.

Hap Hanson.

Josh Claybourn.

Matt Presley.

Anne Rust Aurand.

Jim Moore: Ok, thank you. The minutes from the last meeting are unavailable so we'll table the approval of that until our next meeting. Reports. Town Council Liaison.

Anne Rust Aurand: Town Council has passed something to you in the form of new business. New business A that you see here on the Agenda. We will be talking about later tonight. I think that is all I have tonight.

Jim Moore: Ok. Staff Report.

Candi Burrese(?): No Report.

Jim Moore: Thank you. Unfinished business. The Rezoning Petition by Walmart on the Highway 662 location.

Thank you and good evening, Commissioners. My name is Joe Calderon. I am an attorney representing Walmart Real Estate Business Trust. My address is in care of Bose McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis. We appreciate the additional time for us to work with Town representatives on some of the issues that were raised at last month's meeting, and I think that what we have before you tonight is a better and more refined proposal hopefully with some answers to questions that were raised, not only by you as Commissioners but by the public. We don't pretend that we have been able to resolve every single issue that the public may have raised, and that's unfortunately part of your job as Plan Commissioners is to kind of digest all of the information in accordance with your ordinance, your plans, including

the Comprehensive Plan, the State statute guidelines on things that you consider for rezoning and fortunately you get to punt it up to the Town Council for final approval one way or the other. But, we are very, very happy with what we have been able to accomplish in the last several weeks beyond just raising the temperature by 50 or so degrees from that first Wednesday in March. Huh, at its core, as a reminder the proposal is simply to rezone 10 acres, just a little more than 10 acres, that is currently partially zoned commercial C-4, balance Ag A-1 to C-2 commercial. The previous presentation had aerial photos and things like that. I think we are all familiar with the property. The actual owners, the Williams Family, is here tonight to talk in case there are questions and there were questions about the intent on the balance of their property as they own 30 acres or so on that critical corner. What we had previously brought to you goes a little bit beyond what a rezoning requires but we can't run away and hide from what the development has proposed even though in my young days I might have said, well rezoning's only have to do with labeling maps. We have evolved to a point where people, decision makers, the public, expects to know, wants to know, exactly what's going to takes place beyond the map relabeling or the zoning. In what we previously brought to you was a Site Plan that looked like this. And this is page 4 which features a Walmart Neighborhood Market, a grocery store. This version was about 41,000 square feet. And the Plan generally indicates that it was pushed a little bit to the east of the existing ditch and creek bed and vegetation and with 2 access points, one on the west and one on the east. There were a number of topics discussed in regards to this particular configuration. Traffic access were critical and what we will show you in the next iteration of the Site Plan we think can address some of those issues. So what has taken place since then and some of it is independent of our discussions with you as Plan Commissioner members and the Town is that we discovered that there was significant hydrology issues, i.e. wetlands issues, that were associated kind of on the west end of the development, so the Site Plan now shows the project moved slightly to the east to avoid any impact whatsoever on potential wetlands. And the other key change in conjunction with that is that we are introducing to you tonight a brand new prototype store which is slightly larger than what we had proposed. This one is approximately 45,000 square feet. The same type of merchandise mix. And slightly different access plan. I will let the architect talk a little bit about updated elevations in a moment, but I wanted to point out a couple of features. You will notice that one of the things that we have done is we have kind of configured the access points to work on some better management. One of the features of this Site Plan which is not shown on this version, but we do have on a different thumb drive is that in working with the Site Review Committee the concern has been expressed that, well, what are you going to do about access and people cheating, turning left in from 662 if they miss the main entry. We will create some median within the access drive to, in essence, force the right turn and not permit, with everything in our power, for anybody to turn left. We will also add signage. We are proposing a 100-foot right turn deceleration lane. This would be right in only and then we will have left turn storage lane dedicated left, 100-feet or so of storage. The traffic study which we had updated to even include the 45,000 square foot model recommended only a left turn dedicated lane. Which we have added. The right turn de-cel lane was recommended by your Town Engineer. It was not called for in the traffic study but since it is important for at least the perception of managing traffic better,

if not in reality that we'll go ahead and do that. So, we have made those enhancements. There will be no light. There will just be a stop sign for outbound traffic. We handed to you an updated traffic study which was completed just a couple of weeks ago. And the conclusion even with the store size increasing were very interesting. In other words, the level of service, which is how we measure things at the intersection of Ellerbusch and 662 and at the main entry drive and 662, would all operate at acceptable levels. "C" was the lowest grade. "E" is actually the lowest acceptable grade from a traffic engineering standpoint. We also had the traffic engineer take a look at what would happen if the Williams property was developed as multi-family. Because that is what the Comprehensive Plan calls for. And the study concluded that traffic would be virtually the same from the peak perspective. Although traffic outbound from multi-family would be greater in the morning. Traffic generated by the proposed development would be greater outbound in the evening rush hour. It is about 120 cars difference either way. So, in essence, it is a wash. If the property were to be developed in other words, strictly for your Comprehensive Plan, then the traffic impact would be the same. What is important to note, is that in either instance, the acceptable levels of service would be maintained. That is just a summary of some of the changes we've made to the Site Plan which I discussed. Revised elevations also occurred. There were comments by both members of the public as well as Plan Commission members regarding being respectful of the Town's heritage. This is clearly a gateway property. We respect that. We wanted to come up with something that would reflect a little bit more of what the Town felt was important. Discussions that we've had ongoing with the Site Review Committee focused on, well let's lighten it up. We don't want the store to look like a warehouse. We don't want it to be too dark at night. We want it to be inviting. So we've added windows, we've added cornice, we've changed building materials around so that we have perspective rendering like this. And I think that there is even an update that Jeff Suchan from the architectural firm can explain to you. This is another view from the front. So you can see the windows. This is a nighttime view. Ultimately leading to what the fuel island looks like. So, there is masonry accents as well. Jeff, do you want to add anything to the renderings in terms of even what you brought to the table today?

Jeff Suchan: Thank you, very much. Jeff Suchan with LKR Architecture out of Wichita, Kansas. I won't spend a lot of time talking about it, but we are very excited about this new prototype building. I think it has really gone a long way to help out with a lot of things of breaking up the mass of the building, adding the additional windows and there are some things in addition to what this new prototype that we have gone ahead and added. We knew that brick was a more of a traditional material. We have added a considerable amount of brick across the front there. And also added the cornices onto the building. In addition to what is being shown up on the screen you've got in front of you, is some updated renderings that as we have been working with staff to try and address some concerns. In addition to what is shown up on the screen, we did add some additional cornices at the entry vestibule area and also added some divided lights on the smaller windows going around the sides there. So, I think that is some of the major stuff. Thank you.

Joe Calderon: We've, a, in addition, we have updated the Use and Development Commitment that we tendered to you last month. And this is in working again through your staff and the Site Review Committee. We have committed in 1-A, and you should have the most updated Commitment that we tendered to your attorney earlier today. As previously mentioned, the traffic improvements will be done at Petitioner's expense. This is even though it is work within public the right-of-way, the Petitioner will get the appropriate permits and spend the necessary dollars to create the right turn deceleration lane along the south side of 662. They will create the dedicated left turn lane for west bound traffic, so that folks can turn left into the development. Both of those storage capacities will be about 100-feet in length. The traffic commitments have been reviewed by your Town Engineer as well as the MPO and have been signed off, if you will. We will build the east access drive per Site Plan. We will build it to Town's street standards. And we will dedicate it to the public so as to facilitate a sensible residential development to the south someday. The Rivertown Trail we have been in discussions. We have shown it on the Site Plan as being just off of the existing right-of-way along the south side of the right-of way of 662. And you can see it highlighted on the Plan. We have since had discussions with the Site Review Committee and the MPO would like us to shift that Trail farther to the south away from the right-of-way and we do have sufficient room. Our engineer is here to do that. So we are talking, I think the comment was, maybe a semitrailer, which could be 50-feet, 60-feet, in length. Moving that to the south to get the Trail off of the intersection between the driveway and the highway. Our engineer believes that can be done. We do have sufficient room. Grading should not be a problem in that regard. We will have that right-of-way dedicated at no charge to the Town and work in further concert with the Review Committee to come up with the appropriate details to insure safe crossings, whether that be signage, raised pavement, things of that nature, to help address any concerns about conflicts between pedestrians and vehicular traffic. We had talked quite a bit last month about a traffic signal some day at the intersection of the driveway, what I call the east drive and 662. As I reported, the traffic study, even going out to 2025, does not see a warrant for a signal. However, we understand that that was a practical concern from the Town. And we understand that things can change. So working again with your attorney and the Site Review Committee what we have said is that if the property that is owned by the Williams does get developed and triggers a warrant, then the Petitioner, Walmart, will contribute it's proportionate share to build a traffic signal. In other words, it won't be a public burden, it will be a private burden to build the traffic signal. That's commitment D. We worked quite a bit with your attorney on the appropriate language and, you know, understand that it is nine lines long. So if there is any explanation or breakdown or changes that the Plan Commission wants to discuss, we are happy to do that here and now. We had kept Use Restrictions pretty much as they were before. We actually crossed out multi-family because that's a Comp. Plan designation and my client asked me to have a caveat to the equipment rental and leasing to account for the fact that they rent out Rug Doctor-type stuff. And so I put it in as an accessory. It is not a primary use. I think the Ordinance when you talk about equipment rental and leasing, it is more like construction and lawn, heavier equipment with lots of outside storage. That'll still be here, I just didn't put a caveat for accessory use-types of equipment rental. So that, in essence, brings you up to speed. We've also discussed a number of

other issues which the Site Review Committee tonight as we've brought this case tonight. And I think that the report that you received earlier today kind of encapsulates those discussions. The bottom line is that my client wants to be very cooperative with the Town. We are offering things that we think go above and beyond Ordinance requirements and we understand that we have too. We are certainly willing to engage in discussions with you as Plan Commission. We have the authority, obviously, to amend commitments and tender them for ultimate approval by the Council to go along with your recommendation. We know that your decision is a large one tonight. We ask that you kind of think about things from the Plan Commissioner's standpoint. It is not all about we don't need a grocery. We don't need Walmart. That's not really part of the equation. The essence of what your decision is, is to consider what is the character of the area from the land use perspective. And I think that the Site Review Committee encapsulates that very nicely. We've got industrial to the west. We've got commercial to the north. We also have residential to the north. We have residential to the east. And quite a lot of undeveloped land, farm ground currently, as well. We know we have to protect that and I think that our plan does that quite well. We're preserving quite a lot of trees. In fact, the Site Review Committee has asked us to consider, to the extent that we lose any trees along the canopy along the right-of-way as part of our work here to make the entry drive that we do some enhanced replacement. We are certainly willing to do that and work with the Site Review Committee on the appropriate size of replacement trees and number of trees as well. Plenty of other trees along this side will be preserved. All of this ground will remain in its natural state. So we are trying to be very respectful. Character of structures around the area. You have industrial structures. Commercial structures. Residential structures. I think what we propose from a structural standpoint will be quite compatible with all of those. We tried to break up the massing to make the building inviting and compatible with existing. The Comprehensive Plan is just one item that you are to consider. The Comprehensive Plan clearly calls for something other than ag. Something other than single family. So what we tried to do, even though retail and multi-family isn't necessarily the same, we try to bring it down to a common denominator and that is we did take a look at traffic impact as being one impact to compare the two. And the traffic impact between multi-family and the proposal is virtually the same. You get a little more bang for the buck from the proposal from a property tax standpoint. Not sending kids to school. Plus it is at the 3% cap and multi-family is at 2% cap. So you do get good bang for your buck from a property tax standpoint. And that ties in really to the last kind of guideline from a rezoning recommendation. And that is a responsible growth and development. There has not been anything quite like this in the Town. And that is something that we certainly respect. We think that this site being developed in the fashion that it is, is very respectful of the 10 acres. It is not overly developed. It provides very much the kind of setting that is appropriate for a transitional site. A site that respects the environment. That respects the transition piece that it is, but also recognizes that it is in fact not necessarily appropriate to have single family type residential development adjacent to not only a highway but the industrial uses to the west. So, we think that if you really look at the guidelines for recommendations that we think that all things tilt in the favor of making a positive recommendation to the Town Council this evening. And we do have representatives from the engineer and architectural firm, Jeff Suchan, who previously

spoke, and we do have Walmart representatives as well that we can all answer any questions that the Commission members may have. Thank you.

Jim Moore: I have one quick question and I think I know the answer to. You will be able to turn left onto 662 from the property. Is that correct?

Joe Calderon: From the main entry, yes. The traffic study looked at that and the level of service at that intersection is upgrading well within acceptable guidelines. Even with a seemingly difficult left out.

Jim Moore: Ok, thank you.

Josh Claybourne: I don't know our Sign Ordinance as well as I probably should, but as I recall from a recent dispute, you can't have, correct me if I am wrong Chris, lighted changing signs, two of them within a certain number of feet of each other.

Chris Wischer: Right. That is right.

Josh Claybourne: Is that a problem here with the fact that Casey's is right across the street?

Chris Wischer: Well, it could be. I mean when it comes time to deal with the sign permit for the signs they want, we'll have to look at that and look at the Sign Ordinance including what Casey's has and whether there is impact.

Joe Calderon: Mr. Claybourn, so you know, we have filed a Variance Petition for signage. We're not going to prosecute that until after, obviously, we get through the rezoning, because there are some square footage limitations and what-not. The building site, for example, is not just related to LED, but that would be determined by the Board of Zoning Appeals.

Josh Claybourne: Anne reminded me, there is the Bank as well.

Chris Wischer: Yeah, that will be dealt with. Assuming this is approved.

Joe Calderon: We are not proposing a changeable sign other than the gas pricing. It is not going to change every six seconds, such as the Bank sign. For example, it is just an LED lettering for the pricing. No other parts of the sign are moving. It is all static.

Josh Claybourne(?): I have a question just out of curiosity, when the Site Plan changed to give consideration to the wetlands, the size of the store increased 10%. Why?

Joe Calderon: The size of the store did not increase because of moving the wetlands. The size of the store changed because it's a new prototype. This will be one of the very first in the country for this prototype. It's again done to provide the customer with the best experience from Walmart's business case standpoint, but it also affords the ability

to do some of the architectural enhancements that you and the Site Review Committee had discussed as well. It is an upgraded proto from a design standpoint as well.

Anne Rust Aurand: I have questions also. Again about the size of the store. Since the store is larger, does that mean there is more parking?

Joe Calderon: Yes.

Anne Rust Aurand: More asphalt?

Joe Calderon: Slightly more asphalt, yes.

Anne Rust Aurand: And in moving the store slightly to the east. Does that mean you're buying a different 10-plus acres, or is it still the same 10-plus acres we looked at about a month ago?

Jeff Suchen: From the southwest portion of the site (cannot understand what he is saying) that it has shifted down there, so it has slightly reconfigured the access point for the east full access which will remain in the exact same location. (Anne is talking over what he is saying)

Anne Rust Aurand: So what about the strip between the ditch and the back of the store? The side of the store? What about the area between the ditch and the side of the store? Some of that is not being purchased?

Joe Calderon: Yea, it is being purchased, but under the remaining undeveloped.

Anne Rust Aurand: Ok, um, the gas station. Is it also a convenience store?

(unknown man): There are limited groceries in there that you might, I think there might be one case or something where you might get pop or something like that. But, yes it would have limited...

Anne Rust Aurand: I noticed that there looks like there is an ice machine or something in the back of the drawing and there are parking spaces in front, so.

(unknown man): Right.

Anne Rust Aurand: Ok. And the median. The median is going to run between the two east bound lanes?

Joe Calderon: Median on....662?

Anne Rust Aurand: Yes, the highway. Where is it? Is it between the westbound lanes, the eastbound lanes. Or is it between the two eastbound lanes?

Joe Calderon: I am sorry, I am not following. There is no median there today.

Anne Rust Aurand: No there isn't. We have had a really bad experience in Ohio Township with medians. That is why this is really important.

Joe Calderon: Right. We are not creating a median in the middle of 662. What we are doing is creating a right turn de-cel. Forcing a right turn in there.

Anne Rust Aurand: Ok, the deceleration lane is going to turn(man is talking over woman)

Joe Calderon: Turn right. And the geometry of this entry drive is, huh, will be such that it will, that it could have raised curb to discourage any additional left turn possibility into this driveway.

Anne Rust Aurand: So the median will be between the two eastbound lanes. The deceleration lane that goes into the property and the eastbound lane that goes straight ahead. The median will be in between those two? So it won't affect getting into the Bank across the street or in the case...(man is talking over woman)

Joe Calderon: There is going to be no median within 662.

Anne Rust Aurand: Ok. It is only after you get on...(man is talking over woman)

Joe Calderon: We are creating a dedicated left within the existing right-of-way, but it will not be median.

Anne Rust Aurand: Ok. And one glaring thing that I don't see addressed here that was asked by us as well as well as by folks in the audience a month ago. Exit plan. I don't see that addressed here.

Joe Calderon: Well, we have had discussions with an exit plan. Uh, and in talking with the Town attorney we are not able to provide for an exit plan, if you will, or some sort of covenant as part of the Use and Development Commitment. Um, what we have encouraged, and I brought this up actually, is that the Town Council adopt an ordinance under the Unsafe Building Law and if it deems that vacant buildings are unsafe, if you will, and if it is Town policy that they want vacant buildings to be demolished after a period of time, then we think that is the more appropriate way to go. That avoids the singling out type of thing and we think that is the appropriate way to address any concerns about that.

Anne Rust Aurand: But you have presented exit plans to other communities?

Joe Calderon: I have never, ever agreed to that in the State of Indiana. Nor have I ever promised, and what is the flip side of that, is an operating covenant, which is we will promise to operate. That's just not part of what they will agree to. They are pretty smart

business people. They don't invest tens of millions of dollars with the intent of, a) picking a really bad site and not operating, but those are pretty big business issues that go a little bit beyond in a lot of cases a zoning decision. Nevertheless, we understand that that is a concern that was raised by the public. Whether it is relevant or not to this owner, to this type of format. We express that many of those old closed stores were on leased property and not Walmart owned property, but we understand it is a concern. We presented a Commitment to my client that was rejected and I said to your attorney that I am working with the City of Muncie with respect to a different client on some demolition to close down stores. And I have sent him a copy of their ordinance which talks about, you know, vacancy being an issue for the Town. So we think that's better addressed as a policy town wide versus individually for a particular user.

Anne Rust Aurand: With all due respect I guess, we see more often, because we know that your client is a good slick business person. But, what we see, and I guess what we're concerned about is moving off and leaving the building to build a bigger location just down the street. That is the kind of thing I think we are concerned about. I know they don't make bad business decisions and decide to build in a place that is a bad risk, but moving down the street or a mile away or, we have that right here in Warrick County. So that is why the question was asked. Thank you.

Joe Calderon: Thank you.

Kris Setzekorn: Speaking of safety. One of my neighbors brought me a report from 2006. "Is Walmart Safe?" report. And it cited that Walmart had an average reported police incidence in Walmart stores 400% higher than Target stores that are nearby. And 6 times higher than the number of (tape just stopped)

(women talking back and forth in the background cannot hear)

Chris Wischer: We don't, we shouldn't have back and forth like that. It is going to be hard to pick up.

(women talking back and forth in the background cannot hear)

Jim Moore: Now, as I understand it, if you want to speak to it, where the gas station is?

(woman in background): single building, I mean.

Jim Moore: I think the pumps are in front of the...

(woman in background cannot hear)

Joe Calderon: It faces 662. The back of the building would face the front of the grocery store.

Jim Moore: So the pumps are in front of that building.

Joe Calderon: Correct.

(woman in background) I am also assuming that there will be dumpsters and all that, that will be right along there. (Cannot hear what she is saying)

Jim Moore: Ok. Anyone else that would like to speak. Alright.

(man in background-William Whitehead) Well I think that was my thoughts. And nobody asked. Laughing. And I think I bought it from one of the Williams. I still love it.

(woman in background still talking-cannot hear)

William Whitehead, 200 West Jennings: I really don't have much to say except that the solution to the traffic problem years ago was to put 4 lanes through downtown Newburgh. Which I think we decided was not a viable solution. That was a battle we fought a long time ago. Um, these gentlemen and ladies are here to represent Walmart. The Williams are here to represent Williams. Everybody in American can stand up for their self-interest. You're here to take care of Newburgh in the self-interest of the people of the Town of Newburgh. Um, from what I have read when Walmart's come into town there is a change. I think we're proposed...unless they do really well like they talked about in Middle Town, we are posed with a looseness situation. If Walmart comes in and prospers it does at the cost of the other businesses. It is a stable business environment if the profit goes to other places it comes out of other people's mouths. If Walmart doesn't get the profit they leave. So I think that is just the last thought I'd like to think about. We don't want four lanes to Newburgh to make it easy for people to have a Walmart. If we build the Walmart it puts the Town in jeopardy either way you look at it.

Jim Moore: Thank you. There is a lady in the back. There is one more and then I will get you.

(woman in background): Ok.

Hi. My name is Laura Torhoon, an I live at 216 Fairfax, which is in Windsor Point Subdivision: Um, I spoke last month. I did not really come planning to speak this month because I thought I'd said everything. Um, but, and everybody has done a really good job. So I don't have much I want to add. But as I listen to things there are a couple of things that did come to my mind. One of them is, I don't understand the explanation as to why the Walmart got 10% bigger. They said it's because it's a new prototype. The new prototype has windows so that it will blend with historic Newburgh which I said last month, no it won't. You cannot do anything to the front of a Walmart to make it blend with historic Newburgh. Windows don't do that. But I don't understand how that made the building get 10% bigger. And my concern here is that as we argue against what we're being told is going to come in, we don't even know what's gonna come in. If it can change that quickly, how much is it gonna change before this thing actually goes

through. So, I feel like we're shooting at a moving target and we don't actually know what it is that they plan. Um, another problem that I have with this is basically that the question came up about an exit plan. And I know that that is a huge concern for a lot of people not just what happens with the Walmart there and the traffic and the safety and all that. But what happens if it closes. I have been told, and I don't know if this is correct or not. I hope you all can get the straight story. I've been told that a lot of times the Walmart will put a non-compete on that location on that building on that land so that nobody else, once they close the store and move out. Nobody else can come in and compete. No similar business can come in and compete. That's scary. I think that explains why a lot of these buildings sit empty for as long as they do. And I don't think that we, I don't know if you are considering this or if you are not, but if you are, I am begging you, let's bring out what the exit plan is because that may be as big of an issue as the Walmart actually being there. And finally, this last point, and I want to say thank you to the Williams family, because I was one of those people standing on my front porch watching the water come closer and closer to my house and not knowing what on earth we were going to do. So thank you. But, as other people have said, that problem is not 100% solved. I am not a civil engineer. I am not an engineer of any type. But if you take 10 acres of farmland and put concrete on 10 acres, that is 10 acres that will not absorb water. That water has got to go somewhere. And I'm envisioning what is to the north, south, east, and west, and I don't know any good place for the water to go. Now I do realize that this argument pertains to anything that goes there. I do understand that. But I hope at least, we are considering what's going to happen, because you know that catty corner, that area is for sale too. That's more land that's not going to absorb water when it's built on and that is a huge issue. So, thank you for your time.

Jim Moore: Thank you.

Helen Williams: A couple of issues that have come up and I want to clarify. I'm not saying that just Walmart is going to cause the traffic issue. I'm saying whatever is there. Whatever is on the opposite, catty corner, um, there is going to be an issue with traffic any way you slice it, guys. And as far as the concrete is concerned, how much concrete do you think is going to be in a multi-unit that somebody says that property was designated to be, without our knowledge. I don't get where that came from. How much concrete do you think would be there. It wouldn't be 10 acres, it would be more like nearly 30 acres, ok. And the engineer, in respect to you and what you do, when they first went to put the 4 lane, if I am not mistaken, my husband suggested there needed to be, years and years ago. There used to be a big culvert underneath the road. And now it's not. It's much smaller. That's where we believe and of course we're not engineers, but we believe that's where the issue is. A big part of Windsor Point, how that closed under the road, is a big issue. I can tell you that I do not believe with all my heart and soul, that our water off of our field and even our home where we live is backing up to Windsor Point. I do not believe that. I think it's because there is an issue with under the road. There needs to be a bigger culvert or, I mean, Ned said years ago, a person could pretty much stand in it. It's much smaller now, is it not? 72 inches. Well, that is pretty big, but is it oval, or is it a big square?

Ned Williams: It is round.

Helen Williams: Ok, round, I mean. Anyway. So I guess that is all I've got to say unless somebody else has a question for me. Cause, we try to get along with our neighbors and with Newburgh. We are not in this to fight and the truth of the matter is, you know, this has been for sale for years and years. And we have to go with what comes forward. Yes, mam.

Anne Rust Aurand(?): If this deal goes through, is that other 19 acres off the market? Or is it still for sale?

Helen Williams: Oh, no. It is all for sale.

Anne Rust Aurand(?): If Walmart, if it goes through, is it still for sale?

Helen Williams: No, mam. No, Mam, we have an agreement with Walmart and I want you people that are neighbors and some people that go to church with me. You know I try to be an honest person. We have no intention whatsoever, we actually have a signed agreement with Walmart, that we will maintain it as a field.

Anne Rust Aurand(?): So you will still be the owner of that 19 acres.

Helen Williams: We will still be the owner. My poor husband will still be mowing along there.

Anne Rust Aurand(?): Are there any caveats on that property?

Helen Williams: The only thing is if we ever decided that anybody, our children down the line, our grandchildren, because to be perfectly honest, our family loves our property. We love where we live.

Anne Rust Aurand(?): Are there any caveats on that property?

Helen Williams: No, mam.

Anne Rust Aurand(?): So you could sell the property.

Helen Williams: No, no, no. Maybe I don't understand terminology. No, we have an agreement with Walmart that we will maintain it as a field.

Anne Rust Aurand(?): And you will maintain ownership of that in perpetuity?

Helen Williams: I am not making a promise to that because as long as I live that is the intent. I can't tell you what my 35 year old son will do. But, with that being said. He

would have to go through and we would have to negotiate with Walmart. This is an agreement we have made. We stand by our word.

Anne Rust Aurand(?): And if Walmart is no longer there. Then what? Then there is no...ok, ok

Helen Williams: But if Walmart isn't there, then the property is for sale. Do you understand.

Anne Rust Aurand(?): Well, I am just asking about the 19 acres. Because I don't think anybody has addressed that.

Helen Williams: No. I thank you for asking because that is a big point I want everyone to know. No one else, I can guarantee you, there is no one else that is going to come in, offer us to buy that property and allow us to keep that as a field. There is seven something acres, if you're familiar, there is a tree line. Ok. The seven acres we took off the market quite a while ago. We decided we may eventually want to build homes or, you know, sell them as lots, or whatever. And we figured it should be off the table as far as anything commercial or whatever.

(man in background): Is that down Williams Lane?

Helen Williams: Yes, down Williams Lane. I don't where, are you familiar with that area? That for over a year, and we live there. And we decided that we wanted to maintain that. The only problem we had was how were we going to get it farmed. The farmer cannot get his equipment in there. And he told us he would not be able to get it in there and he would no longer farm it. And my husband is not a farmer. He is a grass cutter. He is a driftwood picker-upper. He is not a farmer.

Ned Williams (in the background): And a good one.

Helen Williams: Yes he is. Thank you. Um, but that is something we decided to do. Not that will eventually, possibly, be a lot or something along that line. But it will be to coincide with our street, Williams Lane. Ok? Um, the other 29 point whatever acres that we put for sale, always, anybody we have ever talked to within the Town has always understood. When we put the big giant drainpipe through that you know this is for sale and you know someday this is probably gonna be commercial. It doesn't take a rocket scientist to figure out. Property like that along the highway, more than likely, is going to be commercial. That is what's right across the street from it. Why would we think any different. But when Walmart came back to us and negotiated and said, we will let you maintain the nineteen acres ownership and you can keep it (cannot understand what she said) with the understanding that it would be in trust. Now I will also say this, Ned and I have discussed it and we have called our children and told them that there is a possibility that we may someday get tired of maintaining it. You know, because he is going to be 63 and he is full of arthritis. We may not decide to maintain it and then we'd even talked about the possibility of maybe even donating it to the Town for a park or

something to that effect. We don't know. We don't know, you know. But, for now and until, as long as we are living our intent is for maintaining it. Anybody else have anything? Ok.

Jim Moore: Ok, thank you.

Josh Claybourn(?): Chris, I have a question for you. I think this is directed to you. Um, she brought up the possibility of single-family housing or multi-family housing. I know that multi-family was part of the Comprehensive Plan. But this is currently zoned agricultural. There is a small strip, correct?

Chris Wischer: Yah, it is a really small strip. I think it is in the front.

Josh Claybourn(?): So unless and until this is rezoned. Housing cannot be there.

Chris Wischer: Large, very large. Like 10 acre, I cannot remember the exact. On agricultural land you can have single-family residences, but the size of lot is extremely large. So it wouldn't be, you know, if it was gonna be single-family homes, it would need to be some R-1, R-2, R-3. If it was gonna be multi-family it would need to be zoned to that. If it was going to be commercial, it would need to be zoned to that. So, right. You are correct.

Josh Claybourn(?): Ok. Thank you.

Jim Moore: Ok. Anybody else?

I am Mary Mitchell, I live at 1107 W. Phelps: I gotta tell you that I am reeling from the 2000 transactions I get a day. The traffic coming in and out of there as we have all talked about over and over, certainly is an issue. One of the things we can tell at Newburgh, that we have been so proud about, is our greenway or walkway. I haven't heard anything else about how we are going to address that, other than the fact that these kind folks were going to let us go across their property at no charge. But how are we going to physically make it through there. Walking with our kids on bikes with that much traffic coming and going. Is it just going to be a path to the parking lot? And I mean, is that the idea?

Jim Moore: Well the proposal is, do you want to speak to that?

Joe Calderon: We actually have a commitment to that and we have had discussions with the engineer, Site Review Committee, and that there would be as part of the right-of-way dedication for the trail, enhancements to crossings where the trail might cross driveways. That would happen whether it was this development or any other. Whether it is signage, raised pavers in the crossways, or what. Those will all be details, as many other details would be taken up post zoning. But they are in the Commitment.

Jim Moore: Thank you. Anybody else?

Helen Williams: When this was for sale and the Town came to that about the walkways. And we brought that up. Yea, it was eventually going to be sold and very likely commercial.

Jim Moore: Ok. Alright. Any other questions?

Candi Burress: I have one more. I just, real quick. How long has the property been for sale?

Helen Williams: 6 years.

Candi Burress: Ok. Thank you.

Jim Moore: No other discussion or questions? I would entertain a motion. Does anyone want to make a motion?

Josh Claybourn(?): Am I mistaken that the Site Committee is, are you guys doing some sort of report into the record today?

Chris Wischer: We submitted it. And it is part of what you have before you.

Josh Claybourn(?): Ok. So that by submitting that...

Chris Wischer: If you want me to address it, it is in before you.

Josh Claybourn(?): If that is sufficient for the record that is fine.

Jim Moore: Ok. We will entertain once again motion regarding this issue.

Josh Claybourn(?): Well I have a few comments and I don't know the appropriate time to offer those before my vote or now. So...

Chris Wischer: I think appropriately, we need a motion. And it should be regardless of how you intend to a positive motion. Even though you don't have to vote a positive just because you make a positive motion and one second it and then you can have discussion and even at the point where you are making your vote, we will do a roll call vote, you can make comments at the time you are voting. So, just depends on where you want to make the comments.

(Fire truck going down street with siren)

Jim Moore: Anybody smell smoke?

Kris Setzekorn: So, I move that we approve this a, rezoning.

Jim Moore: Ok. We have a motion to approve. Do we have a second?

Josh Claybourn(?): I second.

Jim Moore: Ok, all those in favor?

Chris Wischer: We need a discussion.

Jim Moore: We need a discussion?

Chris Wischer: We need a discussion and I suggest we need a roll call vote when you are ready to vote.

Jim Moore: Alright.

Candi Burress(?): As a business professor, I tend to say let's look at the cost versus benefits. That is always the discussion. What are the costs associated with this rezoning. We are going to destroy the canopy. We might have a crime increase. We've got traffic issues and there might be traffic associated with other things too. We've got an eyesore potentially. Especially if they leave and leave it empty for a long time. We've got potential for cannibalization of current businesses. We've got possibly fire, additional costs associated with fire protection. We've got an opportunity cost. This could be used for something else. Another use. Don't what it is right now, but not Walmart. We've got a history of the business model of Walmart. We've seen what they have done around the country. We've seen what kind of great business partners they are for the community, not. So, they are not good citizens. And then you say, well, what is the benefit? We've got another gas station, We've got another grocery store. We've got another convenience store, We don't need them. We've got them right across the street. Property tax. Maybe. If they don't you know, try to lower it. But we've got additional costs as well. So, I am saying the cost versus the benefit, it doesn't add up and I vote no.

Jim Moore: Alright. You'll get your change to vote. Any other discussion.

Josh Claybourn(?): Um, I want to start by thanking everyone on the Site Committee for their hard work. And that includes, as well, the Town Council. Um, I know that they have spent a lot of time and given this a lot of serious consideration. It's an important gateway to the community as many people have commented. Um, and, whether you agree or not of how a Council member will vote on this, I think we all owe them gratitude for the amount of work and consideration they have given to this. And I think maybe we take for granted sometimes that everyone knows how this process works. So to underscore this again, we vote yes or no and it is really more of a recommendation of the Town Council who will ultimately decide this. So, whether this is a yes vote or a no vote today, I think all of you who have feelings on this, I encourage you to show up to the Town Council meeting when this is ultimately decided. And also to talk to your Town Council members. But to just underscore again, seeing up close how hard they have all worked, I am really impressed by that. I think as the Town Council, we as

Newburgh citizens can be proud of. I want to say also, one thing that is not influencing my vote and that is Walmart as an entity. And the reason is that we're being asked to rezone this from agricultural to C-2. And so, whether Walmart comes in for some short amount of time, it could be somebody after that and so, I also think it is really not our job to decide whether a supermarket is needed or say a neighborhood market is needed or not needed. I think we just have to look at this generically as a C-2. I also think there are some questionable legal grounds if we get into deciding, well we want to say no to Walmart, but we'd say yes to Whole Foods, as an example. I think that is really very dangerous grounds to go on. Having said that, I do have many other concerns. It's become clear that the Town leadership wants us to develop, and I do agree with that. But I think it should be developed and zoned with a holistic view to the whole Town consistent with long range planning. And as it relates to long range planning, I am concerned that for such an important area that is a gateway, our Comprehensive Plan that looked at this was done last in 2001. It is outdated. It has been quite a long time and it was, the Comprehensive Plan, at a time when the Town limits were expected to be much larger than they are. Now that the Town limits are what they are, and it is going to be substantially smaller, I think we really need to look at this area more holistically. Take all the input that one might take in terms of the Comprehensive Plan and do that first. Again, I commend the Town Council who appropriated funding for such a Comprehensive Plan. But I am really concerned about hastily rushing into this before that Plan is done. Moreover, Walmart has said before that many of the commitments they've made go above and beyond what our ordinance commitments require. And in some cases, that is absolutely true. They are going above what's required. And yet at the same time, many of you have expressed and I have felt myself, that still those commitments aren't enough. And so to me that suggests that our ordinances aren't up to snuff. They are not what we really want them to be so that underscores once again what I think is a gaping hole here of us addressing and updating our ordinances and with that is also our Comprehensive Plan. So, I guess, the best way to put this is, I feel like we have been caught flat footed. As a community and as a Plan Commission. Because we have had this offer that someone comes to us before we are really prepared to address it in a way that we need to. We need to insure that our ordinances can address such a large area that is a gateway. The potential for such a developed commercial area, which I think we generally agree, at some point needs to be developed in some way. But if it is going to be commercial, it needs to be done with the type of ordinances that we think are best and we're just not there yet. So, in other words, I think this Plan Commission and the Town Council have a lot of work to do as relates to our ordinances and Plan Commission before we can really rezone this. And so for that reason I am going to end up voting no as well.

Jim Moore: Ok.

Hap Hanson: I would like to just make one comment that Mr. Talley insinuated that there was or might be some kind of animosity or negative feelings towards the Williams regarding this. I want to assure, I don't care about Mr. Talley, but I want to make sure that you two realize that is not the case.

Helen Williams: No, we don't feel that way.

Hap Hanson: Good. Good. Absolutely. Thank you.

Jim Moore: Anyone else? Ok. We have a motion on the table to approve the rezoning and a second. All those in favor, please say I. All those opposed please say no. The no's have it. [lots of clapping] We have one more issue to consider and we'd like to

Candi Burress(?): Before you go on, I just want to make it very clear we have a Town Council meeting Wednesday night. This will not be on the agenda for Wednesday night. But it will be, as these folks have said, it will be on a future Town Council agenda. But it will not be Wednesday night of this week. Thank you.

Jim Moore: No, I was going to say we are going to take a 5 minute break.

Jim Moore: Let's resume our meeting. And the next item is the rezoning petition for 2 Gray Street.

Chris Wischer: Do you want me to address that. So we have talked about this before at least once that I remember at this meeting. And 2 Gray Street is on the corner of State and Gray. The property is vacant. It is a residentially used property. It happens to be zoned C-1 Town Core Commercial. Yes. I don't know the background. But when everything was zoned back in the 90's, whenever the last comprehensive full zoning was done. The strip along State Street there from that property north is all Town Core Commercial. So, we are in the process of, we've inspected it. It has significant code violations, unsafe housing issues that the Council is considering taking action for either repair order or in the worst case, a raze order. The concern is, if it is razed, that being C-1 it would be available under our Code for a number of commercial uses.

Josh Claybourne(?): Like a Walmart convenience store.

Chris Wischer: Like a grocery store. And liquor store. I don't know, there are a number of things. And so the Council has initiated the process, under your zoning code and under the statutes, a property owner can initiate a zoning, but the Plan Commission or the Council can also initiate its own zoning petition. So the Council has initiated a petition to rezone that property to a residential zone. And we are in the process of preparing that. Today we wanted to make you aware of that. That it will be advertised and that it will be on your agenda at your next meeting for public hearing to rezone that property. We are taking extra procedural caution with it because the Council is doing it on their own accord and not the property owner coming in and asking, so we want to make sure we have dotted our I's and crossed our T's. So that, anything I missed on that, Anne.

Anne Rust Aurand: No.

Jim Moore: So there is nothing you need from us right now?

Chris Wischer: I don't think there is anything we need (tape stopped)

A handwritten signature in cursive script, appearing to read "Tom B. Smith". The signature is written in black ink on a white background.

