

March 9, 2018

The Honorable Colleen Fanning
Councilor, City-County Council of Marion County and Indianapolis
241 City-County Building
200 East Washington Street
Indianapolis, Indiana 46204

RE: Haverstick Woods
MDC 2016-ZON-020

Dear Councilor Fanning:

On behalf of neighbors and property owners from Driftwood Hills, and the Indiana Forest Alliance, we write to offer opposition to any attempt to overturn a unanimous Council vote in November 2017 to affirm denial of the Petition to Amend zoning, MDC Docket No. 2016-ZON-020 for the tracts at 86th Street and Haverstick, called Haverstick Woods.

This property has been the subject of multiple battles between potential developers and neighbors in the community most impacted by the planned developments. In 2005, after strong vocal community opposition, and subsequent legal challenges, the property was zoned D-P, based upon a Petition and Preliminary Plan to develop the entire site. No Final Plan was ever submitted to the MDC for approval and no progress was ever made beyond the zoning ordinance amendment.

The property was purchased by the current owners and a Petition was filed to amend the ordinance to allow development of only a portion of the site. That Petition was again opposed by the community. After due consideration by the MDC and full hearings, the Petition was denied and certified to the Council in October 2017. On November 6, 2017, the Council unanimously upheld the denial.

Sometime after the Council vote, Petitioner apparently discovered a clerical error in the property description in the Certification. The legal basis being argued to re-open the entire process is this simple clerical error. There is no claim at all that the substance or merits of MDC Docket 2016-ZON-020, of the Commission's

decision, or of the Council's vote, are changed, or that new facts or circumstances exists to warrant reopening this already final decision by the Council.

The finality of the Council's November vote is based upon Indiana statutes and the MDC Rules governing the Petition process. Once acted upon, or left without action for 30 days, the Ordinance is final. Any later change to the ordinance must be raised in a new request to amend the Ordinance.

There are technical deficiencies in the propriety of reopening the vote due to a typographical error. Clerical and typographical errors are corrected by process, not by substantive legislative change to City Ordinances. Such errors occur frequently enough in regulatory and legislative actions that it is universally a ministerial function, not a complete substantive do-over of the issue and the vote.

The authority to correct immaterial clerical errors with no impact on the substance of fact-finding and recommendations by the agency, or of legislative action by the Council on those recommendations, is sound public policy. Any other result would lead to an avalanche of interests scouring the record for simple errors, then lobbying to re-open the issues involved, with no real meritorious arguments in support of the push to re-hear each vote. Finality and public confidence in Council actions would both suffer.

Statutes, Rules and good sense dictate that significant deference be given to the fact-finding, regulatory expertise, and recommendations by the MDC. Professional evaluation of petitions, consideration of public input into decision-making, and recommendations to the Council build a strong foundation for sound, community-centered development and policy-making.

It is apparent that legal questions raised by re-opening the entire matter just to make clerical corrections will inevitably lead to litigation challenging the propriety of the second vote. While lawyers on both sides of the debate may argue the law and what seem to be controlling cases, only the courts can make that final decision. There are those who tend to believe it best to avoid judicial involvement in legislative matters whenever possible. That should be possible here.

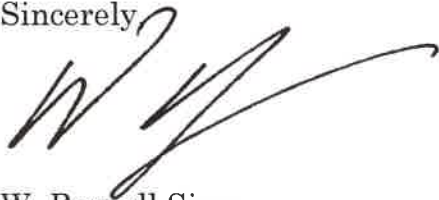
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Interestingly, it appears the reversal of position by some neighborhood groups to now support the Alexander Project and the new vote was based in part upon direct comments by the developer's agents that without this new vote changing the outcome, the owner would develop the entire property using the now-long-outdated 2005 Preliminary Development Plan and would cut much of the forest down. Yet lost in that threat to destroy Haverstick Woods was that after several failed attempts by the current developer, the Planning Staff at MDC believe the original zoning amendment and Preliminary Plan submitted in 2005 are no longer workable and could never be approved.

Finally, planned development, community and neighborhood concerns, urban forest preservation, and environmental protection can come together to protect the life and character of forested residential neighborhoods like Driftwood Hills in Indianapolis. Bringing those interests together cooperatively benefits the entire city, along with the neighborhood and the current owner of this most-forested part of Driftwood Hills. The flawed re-opening of a final ordinance based upon clerical errors benefits no one.

We urge the Council to stand by the MDC's Certification and its own vote affirming, and not act to re-open MDC 2016-ZON-020.

Sincerely

A handwritten signature in black ink, appearing to read 'W. Russell Sipes', with a long, sweeping horizontal stroke extending to the right.

W. Russell Sipes