

A G E N D A

MASSILLON PLANNING COMMISSION

FEBRUARY 13, 1991 7:30 P.M.

MASSILLON CITY COUNCIL CHAMBERS

1. Approval of the Minutes for the January 9, 1991 Commission Meeting.
2. Petitions and Requests

Rezoning Request

Location: The west side of Wales Road, N.E., approximately 120 feet north of Burd Avenue, N.E., consisting of Out Lot 363 and Lot No. 10170, to be rezoned from R-3 Single Family Residential to B-3 General Business. This request has been submitted by William E. Baucom, President of Evans-Baucom & Assoc., Inc., who wishes to utilize this property for general commercial use. This rezoning request was originally considered by the Planning Commission at its January 10, 1990 meeting, at which time it was tabled until a legal opinion concerning "spot zoning" could be obtained from the City Law Director.

3. Other Business

The Planning Commission met in regular session on Wednesday, January 9, 1991, in the Mayor's Conference Room. The following were present:

Chairman Fred Wilson
Mayor Francis Cicchinelli
Dr. Dale E. Hart
Michael Loudiana
Thomas Wilson
Rev. David Dodson
Jeanette Holloway

Robert Wagoner
Aane Aaby
Marilyn Frazier

The first item before the Committee was the minutes of the November 14, 1990 meeting. Rev. Dodson moved to approve the minutes as prepared, seconded by Thomas Wilson, motion carried unanimously.

The next item under petition and requests.

Final Plat - Castle West Estates No. 1

Location: The east side of 32nd Street, N.W., between Lincoln Way, N.W., and the City North Corporation Line. The plat will establish a total of 21 lots, zoned R-2 Single Family Residential, and will dedicate Castle West Circle, N.W., and portions of Jormay Lane, N.W. The plat has been submitted by Therese Matie, project developer. Mr. Wagoner presented the request. He explained that the Brookfield Storm Sewer goes through this property. It also complies with R-2 Residential District requirements. The City will be assisting with some improvements. There will be an additional thirty (30) feet of Right of Way to 32nd Street. Sidewalks will be installed along the east side of 32nd Street, adjacent to the development. Kim Himmel was present representing Therese Matie. Rev. Dodson moved for approval, seconded by Mayor Cicchinelli, motion carried unanimously.

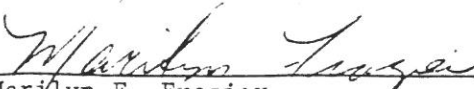
The next item before the Committee was the election of officers. Robert Wagoner chaired this portion of the meeting.

Mayor Cicchinelli moved to re-elect Fred Wilson, Chairman, and Rev. Dodson Vice-Chairman, Dr. Hart seconded motion, motion carried unanimously.

There being no further business, the meeting adjourned at 4:10 P.M.

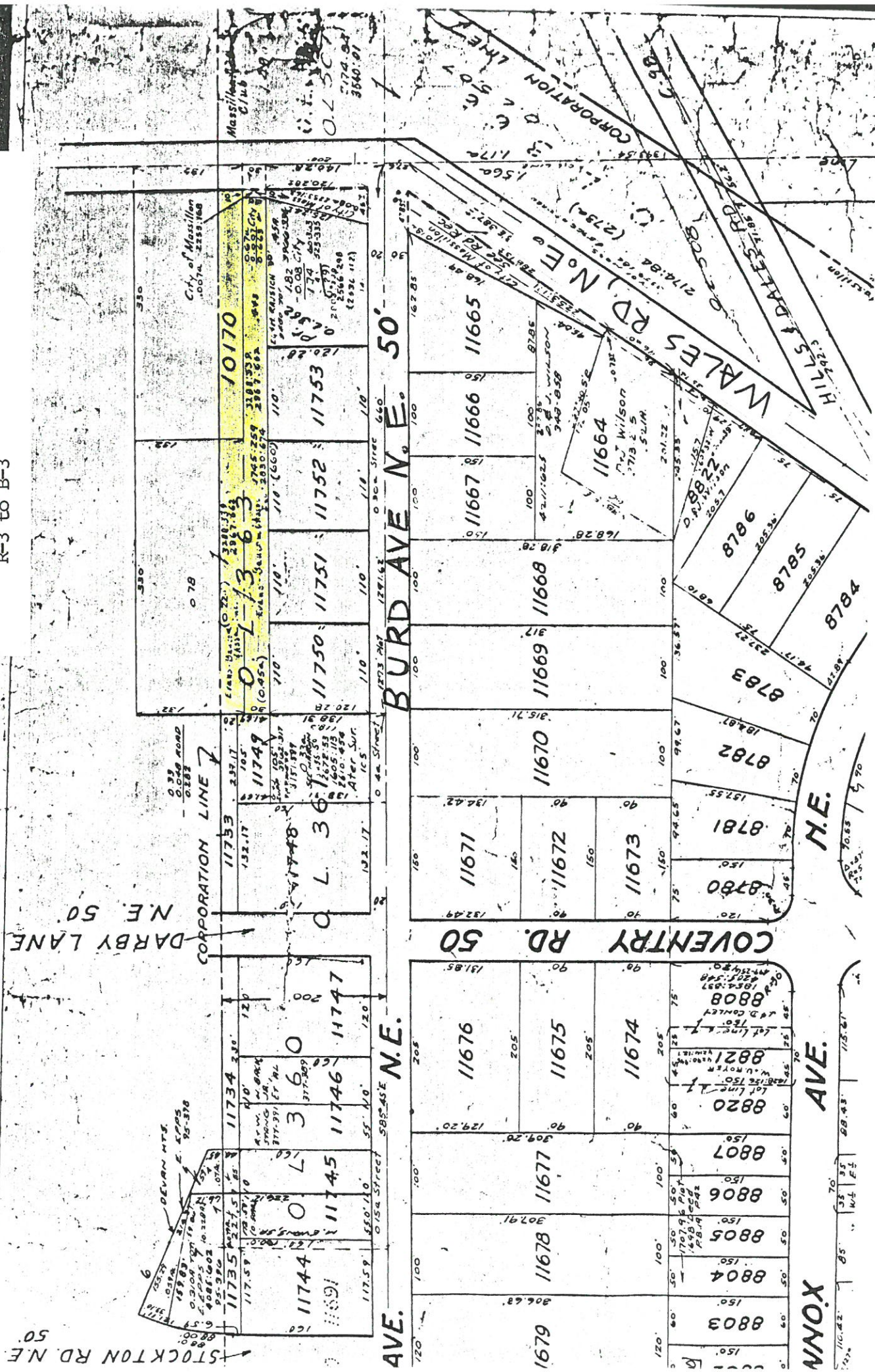
Respectfully submitted:

Approved:


Marilyn E. Frazier
Clerk

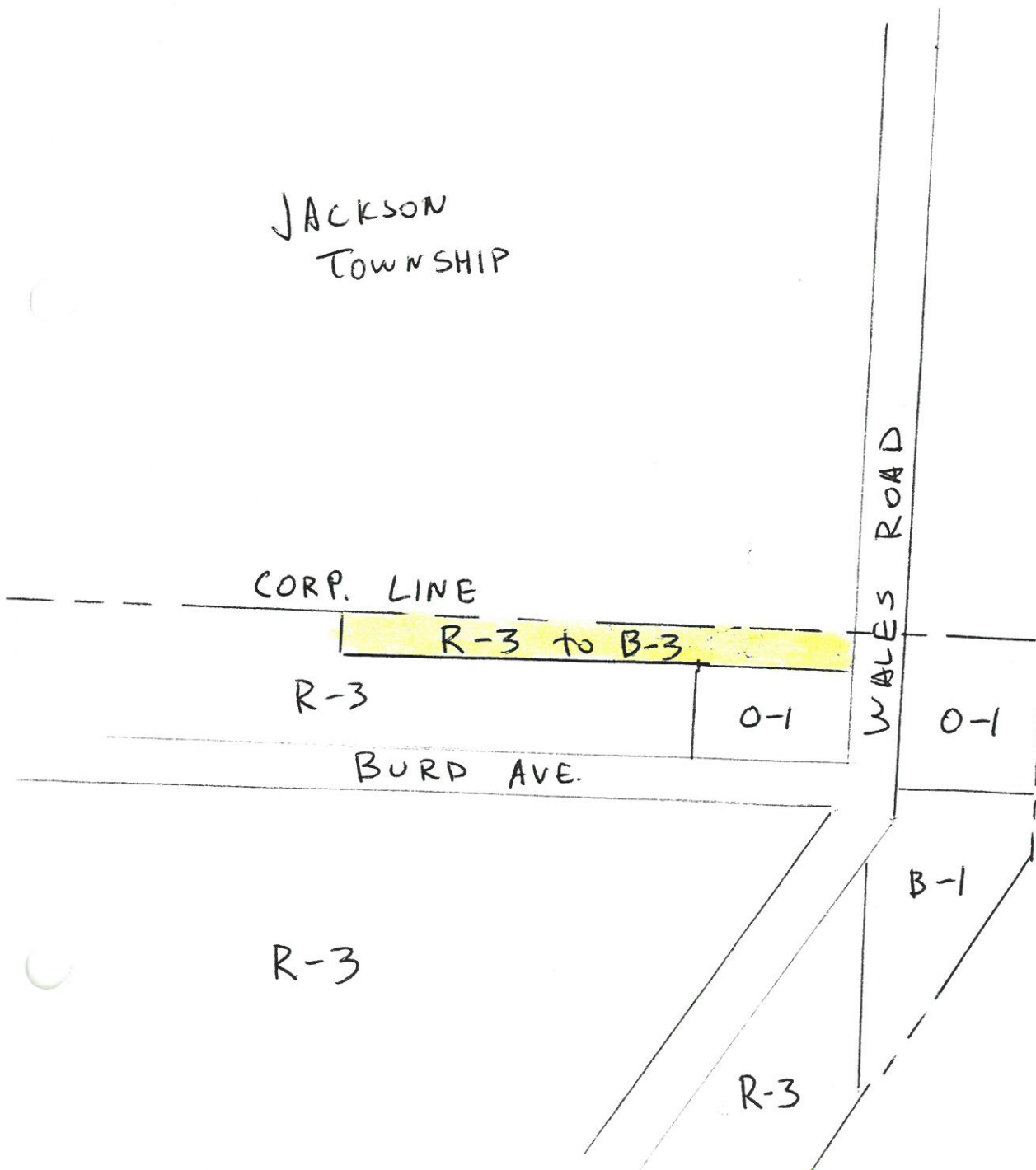
Fred J. Wilson
Chairman

Lot No. 10170, Out Lot 363
R-3 to B-3



EXISTING
ZONING
MAP

JACKSON
TOWNSHIP



JOHN D. FERRERO, JR

DIRECTOR OF LAW
TWO JAMES DUNCAN PLAZA
Massillon, Ohio 44646
(216) 830-1718



Prosecutors:
JOHN H. SIMPSON, Chief
ANTHONY LaPENNA
ROBERT A. ZEDELL
TIMOTHY G. ANDREWS
STEPHEN A. GINELLA

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January 23, 1991

Aane Aaby
Community Development Director
100 City Hall Street S. E.
Massillon, Ohio 44646

RE: Rezoning request by William E. Baucom,
President of Evans-Baucom Assoc. Inc.

Dear Mr. Aaby:

This letter is in response to your request for a legal opinion regarding questions the Massillon Planning Commission have as to the rezoning petition for the Baucom property. The owner desires to rezone this property from R-1 to B-3. Specifically, you express concern about Attorney Paul Paulson's assertion that this is "spot zoning."

As a preliminary statement, I would like to address the Commission's power to evaluate the surrounding property of the requested zone change. In this request, the property abuts the Jackson Township line. The Commission is allowed to look at all the surrounding land of the property in question, including the land in Jackson Township (See O.R.C. 713.02). The City cannot of course zone or rezone Township property, however, it may consider it when "in the opinion of the Commission, it is related to the planning of the municipal corporation." Id.

The term "spot zoning" is used by the Courts in Ohio to describe a zoning ordinance or amendment which is invalid because it classifies or reclassifies an area in a manner which is unreasonable and not sufficiently related to the classification of similarly situated land. If a court declares the classification or reclassification as spot zoning, then it will be declared illegal.

The problem of this property is that it is surrounded by commercial property on one side and residential on the other. The owners of the residential property feel the vacant property is a buffer between them and the commercial area. It could be argued by both sides that if the property is rezoned or not that it is "spot zoning". However, the property in question is located within the City limits. It was originally zoned by the City pursuant to a general plan. The City felt that this property should be zoned

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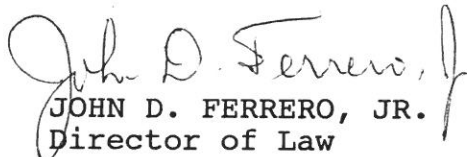
residential pursuant to that plan.

It is my opinion that the Planning Commission must decide whether to recommend rezoning in this matter. As I stated previously, it is my opinion that both sides could argue "spot zoning". When the Commission is making its decision, I would advise them to look at the following issues:

1. What was the City's general plan when it originally zoned the property R-1?
2. The Commission may look at the surrounding Jackson Township property in making its decision.
3. What uses can the property owner avail this property to if it remains R-1?
4. What does the owner intend to use the property for if it is rezoned to B-3?

If you would have any further questions about this matter, please advise.

Very truly yours,


JOHN D. FERRERO, JR.
Director of Law

JDF/ec1