

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
CAUSE NO. 02D_____

DAVID BULMAHN, RONALD)
BULMAHN, and JANET BULMAHN,)
)
Petitioners,)
)
v.)
)
FORT WAYNE PLAN COMMISSION,)
CITY OF FORT WAYNE DEPARTMENT)
OF REDEVELOPMENT,)
EXURBAN USA, INC. and)
EXURBAN INDIANA, LLC,)
)
Respondents.)

**VERIFIED PETITION FOR JUDICIAL REVIEW OF THE
DECISION OF THE FORT WAYNE PLAN COMMISSION
TO APPROVE A PRIMARY DEVELOPMENT PLAN**

Come now the Petitioners, David Bulmahn, Ronald Bulmahn, and Janet Bulmahn, in person and by counsel, and petition this Court pursuant to the provisions of Indiana Code § 36-7-4-1600, et seq., to review and reverse the final decision of Respondent Fort Wayne Plan Commission dated October 17, 2022, approving a Primary Development Plan proposed and submitted by Respondents Exurban USA, Inc. and Exurban Indiana, LLC, PDP-2022-0033, respecting property owned by Respondent City of Fort Wayne Department of Redevelopment. Petitioners further state and verify as follows:

I.

Introduction

1. In this matter, Respondent the City of Fort Wayne Plan Commission (“Plan Commission”) has approved a Primary Development Plan for what it referred to as a “recycling facility” in an I2 zoning district. In reality, the proposed “recycling facility” is an electronic waste processing/smelter/refinery facility which is not a permitted use in an I2 district. An electronic waste recycler is not a permitted “Recycling Processing Facility,” as defined in the Fort Wayne Zoning Ordinance (“FWZO”).

2. After the issue of zoning was raised by members of the public, the would-be operator supplied the Plan Commission with a definition from the FWZO of what would be a permitted use in an I2 district, but deleted from the submitted definition critical language that, on its face, excluded the proposed use from the definition of a permitted use. For these and other reasons set forth herein, the Petitioners seek judicial relief.

3. This Petition for Judicial Review is brought by Petitioners David Bulmahn, Ronald Bulmahn, and Janet Bulmahn, who are aggrieved by the Primary Development Plan (“PDP”) submitted by Respondents Exurban USA, Inc. and Exurban Indiana, LLC (collectively “Exurban”) and approved by Respondent the Plan Commission concerning property located at 5667 Adams Center Road, Fort Wayne, Indiana (“Property”), which Property is currently owned by the City of Fort Wayne Department of Redevelopment (“City”), all as more fully set forth herein.

4. Petitioners are U.S. citizens and residents of Allen County, Indiana, and have a pecuniary interest in the farm and the farmland located directly south of the

Property, farmland consisting of approximately fifty-seven acres, as more fully set forth herein.

5. The Plan Commission has approved the Exurban PDP unlawfully and contrary to the terms of the FWZO, because under the FWZO the proposed PDP is not for a “Recycling Processing Facility,” as defined by the FWZO, and therefore it is not a permitted use in an I2 general industrial district, as is more fully set forth herein.

6. The Court should find that the actions of the Plan Commission in approving the Exurban PDP, PDP-2022-0033, were arbitrary, capricious, contrary to law and not supported by substantial evidence; that the Petitioners have been prejudiced as defined under Indiana Code § 36-7-4-1614; and that the Court should therefore, pursuant to Indiana Code § 36-7-4-1615, reverse the decision of the Plan Commission approving the PDP, and remand this matter to the Plan Commission with instructions to deny Exurban’s application since the planned use is not permitted or lawful in an I2 district; and the Court should further compel the Plan Commission to nullify and set aside its prior approval, because the electronic waste processing/smelter/refinery use set out in the Exurban PDP is not a permitted use under the FWZO.

II.

Parties

7. Petitioner David Bulmahn is an individual who resides at 6419 East Tillman Road, Fort Wayne, IN 46816. His elderly Father, Petitioner Ronald Bulmahn, and his elderly Mother, Petitioner Janet Bulmahn, reside at 9720 Paulding Road, New Haven, IN 46774 (collectively the Petitioners may be referred to at times as the “Bulmahn Family”).

8. The Bulmahn Family owns and has operated a family farm (the “Bulmahn Farm”) on the approximately fifty-seven acres of land located directly across Paulding Road and south of the Property in question. The Bulmahn Farm has an address commonly known as 6015 Adams Center Road, Fort Wayne, Allen County, Indiana, 46816. Attached as **Exhibit “A”** is an aerial photo of the properties at issue, which was contained in the Staff Report issued in connection with PDP-2022-0033, and to which the Petitioners have added information identifying the specific areas relevant to this matter.

9. Members of the Bulmahn Family have owned and worked the Bulmahn Farm for approximately 150 years.

10. The Property, which is the subject of the actions taken by the Respondents and upon which Exurban plans to operate an electronic waste processing/smelter/refinery facility is located at the address commonly known as 5667 Adams Center Road, Fort Wayne, Allen County, Indiana.

11. The City of Fort Wayne Plan Commission is located at Citizens Square, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802 and is responsible for the Allen County Comprehensive Plan and its implementation through the Allen County Zoning Ordinance, the Subdivision Control Ordinance, and various policies and practices.

12. The President of the Plan Commission is Connie Haas Zuber.

13. The Petitioners have issued a summons respecting this action to Ms. Zuber, as required by Ind. Code § 36-7-4-1608(d) and Indiana Trial Rule 4.6(A)(4).

14. The Fort Wayne Plan Commission is represented by an attorney, Robert W. Eherenman of the law firm of Haller and Colvin, and pursuant to Indiana Trial Rule 4.6(A)(4) service shall also be made on Mr. Eherenman.

15. Respondent City of Fort Wayne Department of Redevelopment is the current owner of the Property and is located at Citizens Square, 200 East Berry Street, Suite 320, Fort Wayne, Indiana, 46802.

16. The Executive Director of the City of Fort Wayne Department of Redevelopment is Johnathan Leist, and pursuant to Indiana Trial Rule 4.6(A)(4) service shall also be made on Mr. Leist.

17. The Mayor of the City of Fort Wayne is Thomas C. Henry, Citizens Square, 200 East Berry Street, Suite 470, Fort Wayne, Indiana 46802, and pursuant to Indiana Trial Rule 4.6(A)(4) service shall also be made on Mr. Henry.

18. The Department of Redevelopment and the City of Fort Wayne are represented by City Attorney Malak Heiny and Associate City Attorney Lawrence Shine, City of Fort Wayne Law Department, Citizens Square, 200 East Berry St., Suite 430, Fort Wayne, Indiana 46802, and pursuant to Indiana Trial Rule 4.6(A)(4) service shall also be made on Ms. Heiny and Mr. Shine.

19. Respondent Exurban USA, Inc. is a foreign, for-profit Delaware corporation with its principal office address as 5667 Adams Center Road, Fort Wayne, IN, 46806. Its registered agent is Cogency Global Inc., 9221 Crawfordsville Road, Indianapolis, IN, 46234. Petitioners have issued a summons respecting this action to said registered agent as well as to 5667 Adams Center Road, Fort Wayne, IN, 46806.

20. Upon information and belief, Exurban USA, Inc is a wholly owned subsidiary of Exurban, a company located in the United Kingdom having an address at 60 Grace Church St., London England EC 3VOHP ("Exurban UK").

21. On its Development Plan and Plat Application, the applicant, Exurban USA, Inc., provided as its address the address of Exurban UK, namely 60 Grace Church

St., London England EC 3VOHP. A true and correct copy of a portion of the Exurban PDP is attached hereto and incorporated herein by reference as **Exhibit “B.”**

22. Exurban UK’s CEO, Ian Scarlett, is the President of Exurban USA, Inc. Wes Adams and Jean-Paul Deco are the Co-Founders of Exurban USA, Inc.

23. Exurban USA, Inc. was first registered as a foreign for-profit corporation by the Indiana Secretary of State’s office on June 16, 2022.

24. Respondent Exurban Indiana, LLC is a single-member domestic limited liability company with its principal office address at 5667 Adams Center Road, Fort Wayne, IN, 46806. Its registered agent is Cogency Global Inc., 9221 Crawfordsville Road, Indianapolis, IN, 46234. Petitioners have issued a summons respecting this action to said registered agent as well as to 5667 Adams Center Road, Fort Wayne, IN, 46806.

25. Exurban Indiana, LLC is manager-managed and its manager is Tim Watkin, who is also the COO of Exurban UK.

26. Upon information and belief, the sole member of Exurban Indiana, LLC is Exurban USA, Inc., which is itself a subsidiary of Exurban UK.

27. Alternatively, upon information and belief, the sole member of Exurban Indiana, LLC is Exurban UK.

28. Exurban Indiana, LLC was first registered as a domestic LLC by the Indiana Secretary of State’s office on July 29, 2022.

III.

Jurisdiction and Standing in Accordance with Ind. Code § 36-7-4-1604.

29. Petitioners have exhausted all administrative remedies available to them prior to filing this Petition for Judicial Review of the Plan Commission's decision.

30. This Petition for Judicial Review of the Plan Commission's decision is timely in that it is being filed within thirty days of October 17, 2022, the date on which the Plan Commission approved the Exurban PDP.

31. Jurisdiction and venue is proper in this Court because the land affected by the Plan Commission's decision is located in Allen County, Indiana

32. Petitioners have standing to petition this Court to review the decision of the Plan Commission approving the Exurban PDP pursuant to Indiana Code § 36-7-4-1603, because the Petitioners participated in person and/or by an agent or representative at the Plan Commission hearing held on October 10, 2022, which led to the decision in question regarding the Property.

33. Petitioners Ronald and Janet Bulmahn are the record owners of the Bulmahn Farm, located just South of and adjoining the Property.

34. Petitioner Ronald Bulmahn personally attended the public hearing on the Exurban PDP. Although he did not personally speak at the public hearing, his views in opposition to the PDP application were expressed by his son, David Bulmahn. Petitioners David Bulmahn and Ronald Bulmahn farm the Bulmahn Farm as equal partners, and, accordingly, David Bulmahn has a personal pecuniary interest in preserving the value of the Bulmahn Farm as productive farmland.

35. Acting as his father's business partner, David Bulmahn spoke in opposition to the Exurban PDP as Ronald Bulmahn's agent and representative at the Plan Commission's public hearing on October 10, 2022. David Bulmahn also represented the interests of the Bulmahn Farm and the Bulmahn Family, in speaking in opposition to the location of the proposed Exurban facility.

36. Petitioners are aggrieved persons who are interested as landowners, farmers, and residents, and are adversely affected by the final decision of the Plan Commission authorizing the Exurban PDP for an electronic waste recycler/smelter/refinery facility that is not a permitted use in an I2 (general industrial) district under the FWZO.

37. The Petitioners' interests are particular and specific interests, not common to the general public, given that the Bulmahn Farm is immediately adjacent to and in close proximity to the unlawfully permitted proposed facility, and the pecuniary value of the real property owned by Petitioners Ronald and Janet Bulmahn will be adversely affected and diminished as a result, to a great extent not suffered by the public at large.

38. The Bulmahn Family are further threatened because the unlawfully permitted facility may emit noxious, hazardous, and toxic wastes into the air, water, and/or ground that may negatively affect their health and wellbeing and may negatively affect the land constituting the Bulmahn Farm and further diminish its pecuniary value to its owners, Petitioners Ronald and Janet Bulmahn.

39. The owners of the Bulmahn Farm estimate that if Exurban opens its planned facility as set out in the PDP the pecuniary value of the Bulmahn Farm property will be reduced by approximately 30%.

40. The Petitioners' legal and constitutional rights are among those which the Plan Commission was required to consider and not to impact adversely when it acted contrary to law and made the decision approving the Exurban PDP on which Exurban plans to site its electronic waste recycler/smelter/refinery facility, which decision is challenged here; and the Plan Commission failed in its legal duties to the Petitioners.

41. A judgment in favor of the Petitioners will substantially eliminate and redress the prejudice to the Petitioners and their land and the prejudice to the Petitioners' use of the Bulmahn Farm and the reduction to its pecuniary value that will be caused by the Plan Commission's unlawful approval of the Exurban PDP and its planned electronics waste/smelter facility.

IV.

Factual Background

42. On or about September 6, 2022, Exurban Indiana, LLC and Exurban USA, Inc. filed a Proposed Development Plan and Plat Application for approval by the Plan Commission.

43. In the PDP, Exurban noted that the 76-acre property in question was presently zoned I2 (General Industrial) under the FWZO.

44. As part of their Application to the *Fort Wayne* Plan Commission, the Applicant (Exurban) and the Property Owner (City of Fort Wayne Department of Redevelopment) were to "agree, upon execution and submission of this application, that I/we agree to abide by all provisions of the *Allen County* Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan

Commission as those provisions, procedures and policies related to the handling and disposition of this application; [and] that the above information is true and accurate to the best of my/our knowledge” Ex. B (emphasis added).

45. Upon information and belief, Exurban has thus agreed only to abide by Allen County Zoning laws in its application made to the Fort Wayne Plan Commission; it has not agreed to abide by the FWZO.

46. Executive Director of Redevelopment Jonathan Leist signed the Application on behalf of the property owner, the City of Fort Wayne Department of Redevelopment.

47. The copy of the Application Petitioners received from the Plan Commission contains no signature from the Applicant, Exurban USA, Inc., despite the fact that a line for the signature of the “applicant” appears on the form and despite the fact that the Plan Commission’s “PDP submittal requirements” require, *inter alia*, “a signed and completed application.” See Fort Wayne Plan Commission Primary Development Plan Submittal Requirements, attached hereto as **Exhibit “C.”**

48. Internal markings on the Exurban Application show that it was received by the Plan Commission on September 6, 2022, and was assigned a hearing date of October 10, 2022, as Petition PDP-2022-0033. See Ex. B at 1.

49. Exurban also requested that the Plan Commission grant it a waiver of the 50-foot height limitation for an improvement in an I2 district.

50. The Staff Report prepared by the Plan Commission notes that “The applicant [Exurban USA, Inc.] has applied for a Primary Development Plan for a *recycling facility*. Included in that petition is a waiver to increase heights for various buildings on site ranging from 75 feet to 140 feet. The zoning is currently I2/General

Industrial which would permit the proposed *recycling facility*.” (Emphasis added). A true and correct copy of a portion of the Staff Report is attached hereto as **Exhibit “D.”**

51. On October 10, 2022, the Plan Commission held a public hearing on the Exurban PDP, at which several members of the public, including the Petitioners, expressed their opposition to approval of the Exurban PDP.

52. Speaking in favor of the Exurban PDP were Engineering Resources, Inc. engineering consultant Mark Reinhard, Exurban Indiana, LLC co-founder Wes Adams, and Linda Walczak, who works for the Indiana Economic Development Corporation, 200 E. Main Street, Fort Wayne, IN.

53. The individuals who spoke in opposition to the Exurban PDP at the public hearing were:

- a. Ty Simmons, who farms at 2512 East Tillman Road, Fort Wayne, IN;
- b. Maia Pfeffer, 202 East Maple Grove Ave, Fort Wayne, IN;
- c. Alison Adams, 549 Rose Avenue, New Haven, IN;
- d. Aaron Clark, 1924 Dodge Ave., Fort Wayne, IN;
- e. Christine Smith, 6309 E. Tillman Rd., Fort Wayne, IN;
- f. Petitioner David Bulmahn, 6419 E. Tillman Rd., Fort Wayne, IN; and
- g. Cherise Dixie, 4920 Roberta Drive, Fort Wayne, IN.

54. During the public hearing, the President of the Plan Commission described the application as “asking us to approve a primary development plan for a recycling facility It is zoned I2 General Industrial.”

55. Exurban engineer Mark Reinhard testified that the property was “currently zoned I2, which does allow recycling processing facilities.” Later Mr. Reinhard testified and described the facility’s function as recycling “electronic waste.”

56. Exurban Indiana, LLC co-founder Wes Adams testified that the proposed facility would be “the country’s first zero-waste *electronics* recycling facility.” (Emphasis added).

57. Adams also testified that Exurban would be registering with the Indiana Department of Environmental Management as an “*e-waste* recycling facility.” (Emphasis added). *See* 329 IAC 16 (Indiana regulations requiring registration of e-waste recycling facilities).

58. Respecting the facility’s proposed day-to-day operations, Mr. Adams stated that the Exurban facility would accept “*electronic feed stocks*” such as parts from cell phones, computers, and electronics from vehicles. (Emphasis added).

59. Mr. Adams also testified that Exurban would be “taking the metal concentrates” from electronic waste and then “conditioning them for reuse to supply U.S. manufacturing.”

60. In her remarks to the Plan Commission at the public hearing, Maia Pfeffer specifically questioned the I2 zoning designation because the facility is not a recycler under the FWZO, but a smelter and refinery, as set out on Exurban’s own website.

61. After her two minutes of allotted time to speak during the public hearing had expired, Ms. Pfeffer submitted written questions and documents to the Plan Commission. One of the questions for Exurban to answer was “What can you [Exurban] tell us about the inputs? Mixed Waste Electrical Equipment (WEEE), Auto Industry waste, General scrap, Industrial waste, Incinerator Bottom Ash (IBA).” Attached as **Exhibit “E”** is a true and correct copy of a portion of Ms. Pfeffer’s submission to the Plan Commission. *See* Ex. E, at 2.

62. Exurban UK's own website, <https://www.exurban.co.uk/>, identifies the "inputs" to be processed in "the world's first zero waste circular economy smelters, specifically designed for complex metallurgical waste recycling, including electronic scrap (e-scrap)" which it proposes to site in Fort Wayne, as "Mixed Waste Electrical Equipment (WEEE), Auto Industry waste, General scrap, Industrial waste, Incinerator Bottom Ash (IBA)," with a processing capacity of 45,000 metric tons per year.

63. Mixed Waste Electrical Equipment, Auto Industry waste, General scrap, Industrial waste, and Incinerator Bottom Ash are not recyclable materials that are similar in nature to newspapers, magazines, books, other paper products, glass, and metal cans, and, as set forth below, only items similar to these can be recycled in a permitted "Recycling Processing Facility" in an I2 zoning district under the FWZO.

64. Although several of the persons speaking in opposition to Exurban's project urged the Plan Commission to postpone a decision on the matter in order that additional information on the application could be gathered, the Plan Commission declined to do so.

65. In his statements to the Plan Commission at the public hearing, Petitioner David Bulmahn also questioned whether the proposed facility was a "recycling facility," since he understood it was a smelter and a refinery instead.

66. At some point in the week following the public hearing, Exurban co-founder Wes Adams submitted an undated, two-page document providing additional information in support of Exurban's attempt to site its smelter in southeast Fort Wayne. In that document, Exurban stated as follows, in pertinent part:

Simply put, the City's ID2 zoning ordinance defines a recycling facility as a site that, "receives distinct and recognizable solid waste items...[which] are recycled, reprocessed, and treated in order to return those products

to a condition where they may again be used in new products” and that it “must have not more than ten percent (10%) by volume of the solid waste that passes through the facility ultimately taken for final disposal.”

(Emphasis in original). A true and correct copy of the “Summary in Response to Site Committee Questions” is attached hereto as **Exhibit “F.”** This document was not made available to the public prior to the conclusion of the business meeting held October 17, 2022, during which the Plan Commission would eventually approve Exurban’s PDP.

67. On October 17, 2022, at that regular business meeting, the Plan Commission considered Exurban’s PDP for the supposed “recycling facility” Exurban proposed to erect in an I2 district.

68. Although the Plan Commission had established a deadline of September 6, 2022, for Exurban to submit “All required documents,” see Ex. D, at 1 (Staff Report at 1), at the Plan Commission’s October 17, 2022, business meeting, the Plan Commission nevertheless accepted Exurban’s late-comer documentation, including the document quoted in paragraph 66 (Ex. F at 1), above.

69. At the October 17, 2022, business meeting, the Plan Commission also permitted Exurban to present additional oral testimony in favor of its proposed facility and its PDP.

70. The Plan Commission did not permit members of the public who were present at the October 17, 2022, business meeting and asked to speak to present any additional oral testimony or other evidence in opposition to Exurban’s proposed facility and PDP.

71. The Plan Commission President threatened to call security to remove members of the public who asked to be heard despite the fact that Exurban had been permitted to address the Commission during the meeting and present additional

supporting documentation that had never been made available to the public prior to that meeting.

72. By refusing to postpone its decision as members of the public had previously requested, the Plan Commission deprived the public of an opportunity to review and address the additional documentation that Exurban submitted for the first time at the October 17, 2022, business meeting.

73. There was no discussion at the October 17, 2022, business meeting of whether the proposed Exurban electronics waste recycling/smelter facility would be a permitted use in an I2 zoning district, despite the fact that the question as to whether the zoning was proper had been raised at the public hearing.

74. At its October 17, 2022, business meeting, the Plan Commission unanimously approved the Exurban “recycling facility” set out in its PDP on land located in an I2 district, the Commission having heard further evidence from Exurban at that time, while refusing any further input from the public, and having refused to postpone its decision date, even for a short time.¹

75. As of the date of the filing of this Petition for Judicial Review, the Petitioners are unaware of any findings of fact or conclusions or other written document issued by the Plan Commission explaining its decision to approve the Exurban PDP or addressing the questions raised by the public.

¹ At least one of the Plan Commission members who was absent from the public hearing nevertheless voted to approve the PDP at the business meeting.

V.

Illegality and Grounds for Relief

76. Under Indiana Code §§ 36-7-4-1015, -1614, and -1615, a Petitioner is entitled to judicial relief from the decision of a Plan Commission if a court finds that the person seeking relief has been prejudiced by a decision that is

- (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (b) contrary to Constitutional right, power, privilege, or immunity;
- (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (d) without observance of procedure required by law: **or**
- (e) unsupported by substantial evidence.

77. Petitioners are prejudiced by the decision of the Plan Commission's decision for all of these reasons because the land approved for the Exurban PDP is not properly zoned for the smelter and other structures that Exurban proposes to site and operate on the Property as an electronic waste recycler, which is not a permitted use in an I2 zoning district.

78. The Plan Commission has granted approval to the electronic waste processing/smelter/refinery facility Exurban proposes to construct and operate on the Property based on an erroneous and unlawful conclusion that the proposed facility is a permitted use in an I2 zone under the FWZO.

79. The Plan Commission has erroneously and unlawfully concluded that what Exurban proposes is a "recycling processing facility" as that term is defined by the FWZO. The Plan Commission's decision is arbitrary and capricious and not in

accordance with law; it is contrary to the Petitioner's Constitutional rights, powers, privileges and immunities; it is in excess of the Plan Commission's statutory jurisdiction, authority, and limitations; and is unsupported by substantial evidence, all as follows:

80. The FWZO defines a "Recycling Processing Facility":

Recycling Processing Facility

A recycling facility that receives distinct and recognizable solid waste items ***such as newspapers, magazines, books, and other paper products, glass, metal cans, and other similar products*** are recycled, reprocessed, and treated in order to return those products to a condition where they may again be used in new products. Based on a calendar quarter, a recycling processing facility must have not more than ten percent (10%) by volume of the solid waste that passes through the facility ultimately taken for final disposal.

FWZO § 157.506(B) (Definitions) (emphasis added).

81. A "Recycling Processing Facility," as defined, is a specific permitted use as a matter of right in an I2 General Industrial zoning district. FWZO § 157.223(B).

82. Exurban's proposed use does not fall within the definition of a "Recycling Processing Facility" because Exurban, by its own testimony and submissions, set forth herein, does not propose to store, manage, treat or recycle "distinct and recognizable solid waste items such as newspapers, magazines, books, and other paper products, glass, metal cans, and other similar products," and instead Exurban plans to treat, process, and recycle entirely dissimilar "electronic waste."

83. Faced with the restrictive definition of a permitted "Recycling Processing Facility" under the FWZO, Exurban, as previously mentioned, decided to omit the controlling language quoted above in paragraph 66—"such as newspapers, magazines, books, and other paper products, glass, metal cans, and other similar products"—and

instead it substituted “...[which]” in the document it submitted to the Plan Commission at the October 17, 2022, business meeting to address the question of zoning:

Simply put, the City’s ID2 zoning ordinance defines a recycling facility as a site that, “receives distinct and recognizable solid waste items...[which] are recycled, reprocessed, and treated in order to return those products to a condition where they may again be used in new products” and that it “must have not more than ten percent (10%) by volume of the solid waste that passes through the facility ultimately taken for final disposal.”

Ex. F at 1 (emphasis in original) (“Summary in Response to Site Committee Questions”).

84. By deliberately omitting from its October 17, 2022, submission to the Plan Commission the items defining the types of “distinct and recognizable solid waste” to which the true definition of a permitted facility applies, Exurban in fact intentionally provided the Plan Commission with a misleading definition of a permitted “recycling processing facility” in an I2 district, in an effort to obtain approval of its proposed electronic waste processing/smelter/refinery facility, despite its illegality as a matter of zoning law under the FWZO.

85. Exurban’s misleading definition of a permitted recycling facility, which concealed the fact that Exurban’s planned use of the property as an electronic waste processing/smelter/refinery facility was not within the FWZO’s definition of a “Recycling Processing Facility,” was presented to the Plan Commission members for their review prior to the Plan Commission’s vote to approve Exurban’s PDP on October 17, 2022. Not a single member of the Plan Commission asked to compare the obviously abridged definition provided by Exurban with the actual definition that is contained in the FWZO, although the Commission members and the public would have had adequate time to do so had the Commission granted the postponement requested by members of the public.

86. Exurban's intentional submission of a misleading document to the Plan commission raises serious questions as to Exurban's integrity and credibility as an applicant for a PDP from the City of Fort Wayne.

87. Not only does Exurban, by its own admission, not plan to collect, store, treat, or recycle ordinary solid waste, "such as newspapers, magazines, books, and other paper products, glass, metal cans, and other similar products," which would be permissible under the FWZO, Exurban has asserted that it plans instead to build a facility specifically designed for complex metallurgical waste recycling, including electronic waste.

88. Electronic waste is separately defined by law in Indiana as follows:

- (a) "Electronic waste" or "e-waste" means any waste that is one (1) or more of the following or has one (1) or more of the following components:
 - (1) A circuit board.
 - (2) An electronic component, such as a:
 - (A) diode;
 - (B) resistor;
 - (C) capacitor; or
 - (D) coil.
 - (3) A display device, such as:
 - (A) a CRT;
 - (B) a liquid crystal display screen;
 - (C) a plasma display screen; or
 - (D) another such display device.
 - (4) A computer.
 - (5) An electronic device.
- (b) Electronic waste or e-waste is commonly called electronic scrap or e-scrap.
- (c) The term does not include the following:
 - (1) A vehicle, as defined by IC 13-11-2-245.
 - (2) White goods, as defined by IC 13-11-2-266.

329 IAC 16-2-17. None of these is similar to "newspapers, magazines, books, and other paper products, glass, metal cans, and other similar products," which are the only types of items allowed to be processed at a recycling facility permitted in an I2 district under the FWZO.

89. Exurban co-founder Wes Adams specifically testified at the public hearing that the proposed Exurban facility would accept “electronic feed stocks” such as parts from cell phones, computers, and electronics from vehicles, and that Exurban would be “taking the metal concentrates” from electronic waste and then “conditioning them for reuse to supply U.S. manufacturing.”

90. Despite the questions raised in writing by Maia Pfeffer, who spoke at the public hearing and presented to the Plan Commission at that time written questions to be answered by Exurban, *see Ex. E*, Exurban has never denied it would accept as inputs for the planned Property the inputs Ms. Pfeffer identified, based on information obtained from Exurban’s own website: Mixed Waste Electrical Equipment, Auto Industry waste, General scrap, Industrial waste, and Incinerator Bottom Ash.

91. Indiana’s Electronic Waste Management rules (329 IAC 16) require facilities that store or process e-waste to register with the Indiana Department of Environmental Management before beginning operations and to comply with storage, operating, training, disposal, cleanup, closure, and financial assurance requirements. The E-Waste Management rules apply to anyone who collects, brokers, stores, recycles, resells, dismantles, or demanufactures e-waste, which includes shredded circuit boards. Facilities that process e-waste by thermal treatment or chemical treatment must obtain a solid waste processing facility permit under 329 IAC 11 and 329 IAC 16-4-1. Exurban’s Wes Adams has even admitted in his testimony that Exurban intends to register with IDEM as an “electronic waste recycler.”

92. Although Exurban submitted the (misleading) definition of a “recycling processing facility” to the Plan Commission—holding itself out as an entity seeking to engage in a permitted use in an I2 general industrial zoning district—in fact, Exurban

has admitted its facility will collect, process, and recycle electronic waste—waste separately and specifically defined and regulated under Indiana law. *See, e.g.*, 329 IAC 16-1-2 (application of article to the collecting brokering, storing, recycling, reselling, dismantling, or demanufacturing e-waste); 329 IAC 16-2-17 (defining “electronic waste”); 329 IAC 16-2-19 (defining “electronic waste collection”); 329 IAC 16-2-20 (defining “electronic waste collection facility”); 329 IAC 16-2-21 (defining “electronic waste collector”); 329 IAC 16-2-22 (defining “electronic waste processing”); 329 IAC 16-2-23 (defining “electronic waste processing facility”); and 329 IAC 16-2-24 (defining “electronic waste processor”).

93. In fact, Indiana law and regulations treat electronic recycling, electronic waste, and e-recycling as completely separate and distinct from the recycling of ordinary waste materials, as demonstrated by the regulations set forth above.

94. Exurban is aware that its recycling of electronic waste differs from “general recycling” of ordinary materials such as paper, books, glass, and aluminum cans, which perhaps explains its intentional omission of these materials from its submission of a misleading definition of a “Recycling Processing Facility” to the Plan Commission.

95. Exurban’s written submissions, the testimony of its representatives at the public hearing, and the points made by those who spoke and submitted materials in opposition to Exurban’s application, all demonstrate that the proposed facility is not a permitted use in an I2 zone, notwithstanding Exurban’s attempt to shoehorn itself into the definition of a recycling facility through the misleading use of ellipses and its false representation that its facility would therefore be a permitted use under the FWZO.

96. At the public hearing and the business meeting, no member of the Plan Commission addressed the question of whether an electronics waste recycling/smelter/refinery facility is a permitted use (as defined by the FWZO) in an I2 district; the Plan Commission instead merely continued to refer to the proposed Exurban project generically as a “recycling facility.”

97. The Plan Commission’s refusal to postpone its decision, as members of the public had requested, deprived the Petitioners of due process by not affording them an opportunity to be heard concerning the misleading definition of a “recycling processing facility” that Exurban first submitted at the Plan Commission’s October 17, 2022, business meeting; and, ironically, the Plan Commission’s distaste for public input cost it an opportunity to make a correct decision and, ultimately, has forced the Petitioners into the unenviable position of having to bring the instant action.

98. Because Exurban’s proposed use violates the FWZO as a matter of law, the Plan Commission’s approval was unlawful and prejudicial to the Petitioners for all of the reasons set forth in Indiana Code § 36-7-4-1614 to -1615, as set forth herein.

99. The decision of the Plan Commission should be reversed because the Plan Commission has approved a use on the Property in question that, as a matter of law, is not a permitted use in an I2 zoning district under the FWZO.

VI.

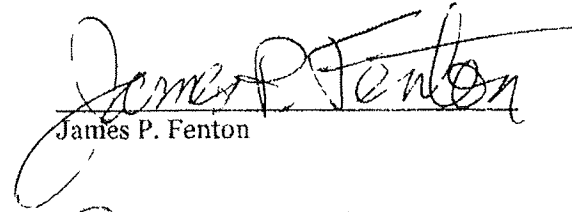
Prayer for Relief

For the above and forgoing reasons, and pursuant to Indiana Code § 36-7-4-1615, Petitioners pray that the Court will set aside the decision of the Plan Commission approving Exurban's Primary Development Plan and remand this matter to the Fort Wayne Plan Commission with instructions to deny the Exurban application since, even if the application had been properly completed and executed by Exurban as the Applicant, nevertheless the proposed use of the property is not a permitted use as a matter of law; and the Petitioners pray that the Court issue an order compelling the Plan Commission to nullify and set aside its prior approval of the Exurban Primary Development Plan; and the Petitioners pray that the Court will grant to them all other just and proper relief.

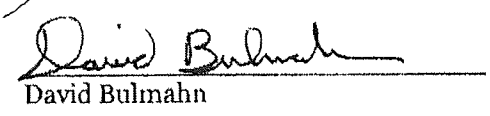
VERIFICATION

I affirm under the pains and penalties for perjury that the above and foregoing is true and correct.

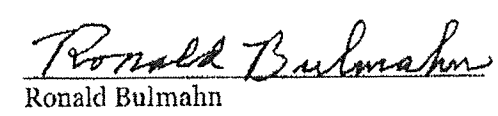
Date: 11-9-22


James P. Fenton

Date: 11-9-22


David Bulmahn

Date: 11-9-22


Ronald Bulmahn

Respectfully submitted,

/s/ James P. Fenton
James P. Fenton, Esq. #6808-02
429 E. Dupont Rd., #1154
Fort Wayne, IN 46825
Tel: (260) 387-7284
Email: jpfenton1754@gmail.com

Attorney for the Petitioners

November 10, 2022



Primary Development Plan PDP-2022-0033 - ExUrban

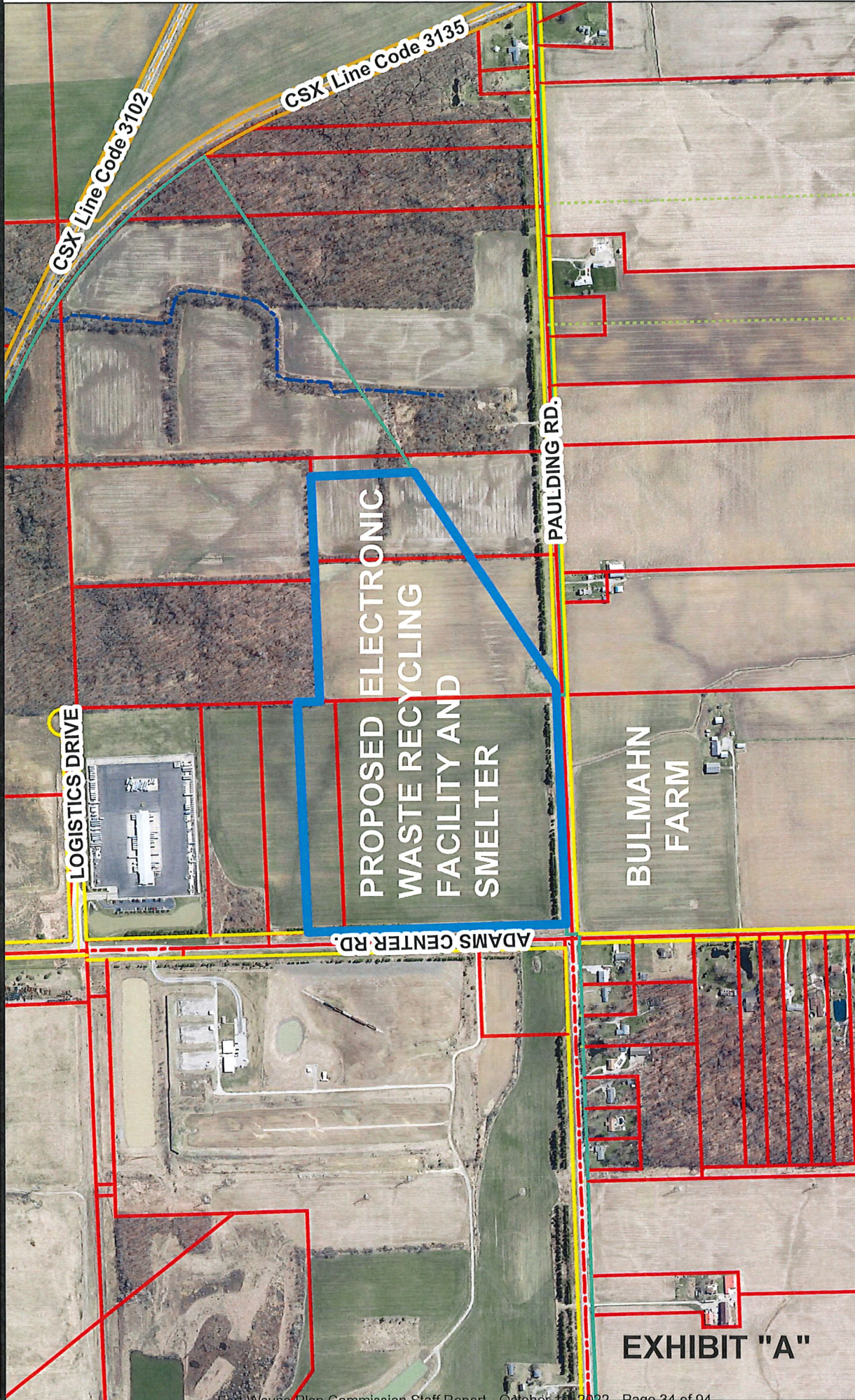


EXHIBIT "A"



1 inch = 700 feet



© 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 9/28/2022

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

Department of Planning Services
Development Plan and Plat Application

Project Name Exurban Recycling

Applicant
Applicant Exurban USA Inc. (Wes Adams)
Address 60 Gracechurch Street
City London State England Zip EC3V 0HR
Telephone (303) 809-4668 Fax _____ E-mail wes.adams@exurban.co.uk

Property Ownership
Property Owner City of Fort Wayne Department of Redevelopment
Address 200 E Berry St. Suite 320
City Fort Wayne State IN Zip 46802
Telephone (260) 423-9411 Fax _____ E-mail _____

Contact Person
Contact Person Mark Reinhard (Engineering Resources Inc.)
Address 4175 New Vision Dr.
City Fort Wayne State IN Zip 46845
Telephone (260) 490-1025 Fax _____ E-mail mark@eri.consulting

All staff correspondence will be sent only to the designated contact person.

Arch./Eng./Or Surveyor
Arch./Eng./Surveyor Mark Reinhard (Engineering Resources Inc.) Indiana Registration # 10911278
Address 4175 New Vision Dr.
City Fort Wayne State IN Zip 46845
Telephone (260) 490-1025 Fax _____ E-mail mark@eri.consulting

Request
 Allen County Planning Jurisdiction City of Fort Wayne Planning Jurisdiction
Requesting approval of a: primary amended primary secondary amended secondary
 residential development plan commercial development plan industrial development plan
 plat minor plat Development Address Adams Center Rd.
Size of development _____ lots _____ units 67 Acres (GFA) square feet
Present Zoning 12 Total acreage of site 76
Township name Adams Township section # 22
Sewer provider City of Fort Wayne Water provider City of Fort Wayne
Proposed Streets: Public and county/city maintained Private and privately maintained

Applications will not be accepted unless the following filing requirements are submitted with this application.
For applicable filing fees and site plan/plat number of copies please contact staff.

Filing Requirements
 Application signed by property owner(s)
 Applicable filing fees (check payable to the Allen County Treasurer)
 Civil and landscape plans submitted electronically or by flash drive (individual PDF documents)
 Boundary Survey and Legal Description
 Waiver request application (if applicable)
 Proposed restrictive covenants (if applicable)

I/We understand and agree, upon execution and submission of this application, that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.65 per notice and a public notice fee of \$30.00 per Indiana code.

(printed name of applicant) _____ (signature of applicant) _____ (date) _____
JONATHAN LEIST _____ _____ 9/6/22
(printed name of property owner) _____ (signature of property owner) _____ (date) _____

Received	Receipt No	Hearing Date	Petition No.
9-6-22	141390	10-10-22	APP-2022-0033

**Fort Wayne Plan Commission
Primary Development Plan
Submittal Requirements**

1. Signed and complete application (4 copies)
 2. Landscape and screening plan (25 copies)
 3. Legal Description and survey (2 copies)
 4. Legal Description, electronic version, Word format.
 5. Electronic version of submittal requirements in Adobe Acrobat PDF version 10 on CD/DVD or Flash Drive
1. Fee

DEPARTMENT OF PLANNING SERVICES

Fort Wayne Planning Jurisdiction PRIMARY DEVELOPMENT PLAN SUBMISSION REQUIREMENTS

General Submittal Requirements:

1. 18 copies of the Primary Development Plan;
2. 2 copies of the proposed site landscaping and screening plan if not included on the primary development plan;
3. 2 copies of the legal description and survey if not included on the primary development plan;
4. \$700 filing fee made payable to the Allen County Treasurer;
5. Electronic version of the primary development plan, landscaping and screening plan, and legal description/survey. The development plan, landscaping and screening plan, and survey should be submitted in Adobe Acrobat PDF version 10. Submitted at the time of submittal on a CD/DVD or Flash Drive;
6. Electronic version of the legal description in Word format. Submitted at the time of submittal on a CD/DVD or Flash Drive.
7. Fully completed signed application.

All development plans submitted for primary approval shall contain the items listed below, if applicable. The Planning staff reserves the right not to accept incomplete submissions, or to accept the submission but defer placing the item on the public hearing agenda until it is complete. The following items must be included on the development plan(s) unless otherwise determined by the Planning staff:

- certification by the appropriate licensed architect, engineer or land surveyor.
- the development plan shall be drawn at a scale of not less than one (1) inch equals 100 feet on a 24 by 36 inch sheet, unless the size of the proposed project requires a different scale or sheet size
- date, north arrow, scale and proposed name of the development;
- name, address, and phone numbers of the developer(s), and the land surveyor, architect or engineer who prepared the development plan;
- a boundary survey of the property, prepared and certified by a licensed land surveyor, which complies with Title 865 Rule 12 of the Indiana Administrative Code. The survey shall have been performed within one (1) year of the submission of the development plan and reflect the current conditions of the site. The following items shall be included on the boundary survey:
 - property boundary lines, giving length and bearing (including reference or basis) on each straight line; and interior angles, radius, point of tangency and length of curved lines. The perimeters of the property shall be dimensioned in feet and decimals as accurately as possible to the nearest one-hundredth (0.01);
 - the width of all adjoining street and highway rights of way, and the street width;
 - existing sidewalks on or adjacent to the development parcel;
 - existing encroachments, including fences, structures, pavement and other improvements, either way across property lines;
 - existing fences and walls located with respect to property lines;
 - recorded or otherwise dedicated easements or similar rights of way, including type of easement;
 - existing lot or tract lines within the development parcel;
 - addresses of existing structures;
 - current zoning of the development parcel;

- existing platted building setback lines; and
- development parcel legal description.
- a topographic/utility survey of the property, prepared and certified by a licensed land surveyor, which complies with Title 865 Rule 12 of the Indiana Administrative Code. The survey shall have been performed within one (1) year of the submission of the development plan and reflect the current conditions of the site. The following items shall be included on the topographic/utility survey:
 - benchmarks in USGS datum;
 - existing site contours at 1 foot intervals based on USGS datum unless the Planning staff determines that the slope of the property requires a different contour interval;
 - location of all existing structures on the development parcel and all off-site structures within 10 feet of the property lines, if the off-site structure locations can be determined from the subject property;
 - if applicable, the location of the special flood hazard area of the regulatory flood as mapped by scale on the Flood Insurance Rate Maps for Allen County, including all on-site established base flood elevations, and the base flood elevation at the property line. If the elevations on the topographic/utility survey indicates an area subject to inundation by the regulatory flood which lies outside of the floodplain identified on the Flood Insurance Rate Map, the information on the topographic/utility survey shall govern and that area shall be considered a special flood hazard area subject to the regulations of this subchapter;
 - existing finished floor elevations of the lowest floor of all structures located within a special flood hazard area;
 - the approximate location of all wetlands on the development parcel according to the current National Wetland Inventory Maps;
 - the location of any natural water features such as lakes, ponds, streams or drainage ways;
 - the location of any Allen County regulated drain(s) on or immediately adjacent to the development parcel, including existing statutory drain easement(s);
 - the location of existing vegetation including the perimeter of all wooded areas, other significant vegetation, and individual trees at and above 2 inches in trunk caliper (measured in accordance with standard horticultural practices);
 - the location and size of all existing water facilities, including the location of all meters, valves and fire hydrants on or serving the development parcel;
 - the location, size, depth, and direction of flow of all existing sanitary sewers, combination sewers, storm drains and culverts on and/or immediately serving the development parcel, including the location of catch basins and manholes with rim elevations and inverts of each pipe;
 - the location and size of existing natural gas distribution facilities on the development parcel;
 - the location and size of existing communication systems on the development parcel, including the location of all poles, towers, and equipment; and
 - names of the utility service providers.
- proposed structures within the development parcel;
- any proposed subdivisions of individual parcels, showing proposed lot, tract or development parcel numbers and dimensions, if applicable;
- the point(s) of connection to existing sanitary sewer, storm sewer and water facilities;
- the proposed location and general sizes of any public sanitary sewer, storm sewer, and water lines;
- proposed storm water drainage flow lines, and the location of swales and retention/detention areas (if applicable);
- proposed street and site light fixture locations;
- proposed public or private streets, including proposed names and right-of-way widths;
- generalized landscaping proposals which address the treatment of the perimeter of the site and parking areas, including landscaping, screening, buffering, shade trees, and fencing proposals;
- any common areas, including proposed recreation amenities;

- existing parks and/or recreation areas adjacent to the development parcel;
- proposed sidewalk locations;
- proposed sign locations and sign types;
- off-street parking areas, service areas, loading areas, and points of access to public or private rights-of-way;
- proposed easements, showing widths and types; and
- areas to be used for the outdoor storage or display of materials, merchandise, machinery, or other such items.

Additional submission requirements. In addition to the required development plan documents, the following information shall be submitted if applicable to the project:

- where applicable, quantitative data indicating the gross residential density and type of dwelling units; and
- a copy of any proposed restrictive covenants.

**Department of Planning Services
Development Plan and Plat Application**

Project Name _____

Applicant

Applicant _____
 Address _____
 City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Property Ownership

Property Owner _____
 Address _____
 City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Contact Person

Contact Person _____
 Address _____
 City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

All staff correspondence will be sent only to the designated contact person.

Arch./Eng. Or Surveyor

Arch./Eng./Surveyor _____ Indiana Registration # _____
 Address _____
 City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Request

Allen County Planning Jurisdiction City of Fort Wayne Planning Jurisdiction
Requesting approval of a: primary amended primary secondary amended secondary
 residential development plan commercial development plan industrial development plan
 plat minor plat Development Address _____
 Size of development _____ lots _____ units _____ (GFA) square feet
 Present Zoning _____ Total acreage of site _____
 Township name _____ Township section # _____
 Sewer provider _____ Water provider _____
 Proposed Streets: Public and county/city maintained Private and privately maintained

Filing Requirements

Applications will not be accepted unless the following filing requirements are submitted with this application. For applicable filing fees and site plan/plat number of copies please contact staff.

- Application signed by property owner(s)
- Applicable filing fees (check payable to the Allen County Treasurer)
- Civil and landscape plans submitted electronically or by flash drive (individual PDF documents)
- Boundary Survey and Legal Description
- Waiver request application (if applicable)
- Proposed restrictive covenants (if applicable)

**FORT WAYNE PLAN COMMISSION
STAFF REPORT • OCTOBER 2022**

PROPOSAL:	Primary Development Plan PDP-2022-0033 - ExUrban
APPLICANT:	ExUrban USA, Inc.
REQUEST:	Approve a primary development plan for a recycling facility with waivers to increase allowable heights from 50 feet to a range of 75 to 140 feet for various structures.
LOCATION:	5667 Adams Center Road, northeast corner of its intersection with E Paulding Road (Section 22 of Adams Township)
LAND AREA:	67 acres
PRESENT ZONING:	I2/General Industrial
NEIGHBORHOOD ASSOCIATIONS:	Southeast Area Partnership, Community Development Neighborhood Activation

SUBMITTAL REQUIREMENTS

- All required documents were submitted by the filing deadline of September 06, 2022.

SITE HISTORY

- No evidence of past development on the site.
- City of Fort Wayne Department of Redevelopment purchased the property in 2004.

STAFF DISCUSSION

The project site is located on the northeast corner of the intersection of East Paulding Road and Adams Center Road. The property is currently owned by City of Fort Wayne Department of Redevelopment and zoned I2/General Industrial. The site is currently an agricultural field broken up into multiple parcels. Surrounding parcels include a Fedex facility to the north, an agricultural field within the City of New Haven jurisdiction to the east, agricultural fields and residential homes to the south and southwest, and Allen County Sheriff's Regional Training Facility to the west. The property is unique in that unincorporated Allen County is adjacent to the south and New Haven jurisdiction is located to the east that bisects several parcels owned by City of Fort Wayne Department of Redevelopment. The proposed development is all within the City of Fort Wayne jurisdiction while the parcel itself has a portion within the City of New Haven jurisdiction.

The applicant has applied for a Primary Development Plan for a recycling facility. Included in that petition is a waiver to increase heights for various buildings on site ranging from 75 feet to 140 feet. The zoning is currently I2/General Industrial which would permit the proposed recycling facility. The site is designed with two access points both along Adams Center Road. The site plan includes 19 structures of various sizes spread throughout the site. The plan includes an AEP switchyard/stub station and a natural gas tie in both along Adams Center Road. Landscaping included on the plan consists of keeping the existing evergreen trees along both Adams Center Road and East Paulding Road as well as landscaping for the employee parking on the northwest portion of the site. Infrastructure improvements were also shown on the site including a new proposed right turn lane and new sewer and water mains. Detention for the site is shown on the southwest portion of the property closest to the intersection. Temporary outdoor storage is located along near the northeast corner of the site. An 8-foot fence is being proposed around the site. Specific signage has not been proposed, but the Ordinance would allow one sign along each of the street entrances, as well as wall signage.

EXHIBIT "D"

The waiver of development design standards included on this petition is described as:

“Request to allow smelter building up to 140' tall, warehouse up to 75' tall, tank house up to 90' tall, E-Waste building up to 115' tall, Leach plant up to 80' tall, and Cu-Line Buildings up to 80' tall.”

The zoning ordinance limits buildings within the I2/General Industrial zoning district to 50 feet. Certain exceptions to the height limit are allowed for mechanical structures, including: **amateur radio towers/antennae**, chimneys, fire or parapet **walls**, flagpoles, grain elevators, industrial installation requiring a vertical production procedure such as a steel mill, silos, skylights, smokestacks, stairways, **steeple**s, television aerials (residential), including radio antennae, uninhabited **structures** for the housing of elevators or mechanical equipment, water tanks (**building** mounted), or water towers.

The **Plan Commission** may waive or adjust a design or **development** standards listed. The Plan Commission will determine the validity of waiver requests by considering the following three criteria:

- (a) The waiver or modification is in conformance with the purposes and intent of this ordinance along with the objectives and policies of the Comprehensive Plan;
- (b) The applicant has submitted adequate evidence to demonstrate that the requested waiver or modification will not have a significant impact on contiguous residential properties; and
- (c) The failure to grant the requested waiver would result in practical difficulties in the use of the property for the proposed development.

The applicant provided the following justification:

- (a) *This property falls within the Adams township industrial area and has been marked as an area of potential for economic development in the Comprehensive Plan. The ordinance increases the setbacks based on the adjacent land use and the height of buildings on site. The buildings are not located directly against the required building setbacks and provide additional buffer space from the adjacent properties than what is necessitated.*
- (b) *There are no contiguous residential properties. On south and west side of property there are existing evergreen trees near the ROW that will provide additional screening that will minimize the impact on residential properties located on the south west corner of Adam Center Rd. and Paulding Rd.*
- (c) *Failure to grant the building height waiver will limit the functionality and capabilities of the facility.*

DEPARTMENT REVIEW:

Fire Department: Under review.

Allen County Surveyor's Office: Under Review

Stormwater Engineering: Primary approved with comments for secondary plans.

Water Engineering: Primary Reviewed.

Sewer Engineering: Primary Reviewed.

Transportation and Traffic Engineering: Primary approved with comments for secondary plans.

Allen County Highway: Under Review

Floodplain Manager: N/A

Park Department: Primary Approved.

Airport Overlay District: Under Review

STAFF RECOMMENDATION:

Conditional Approval contingent upon the developer satisfying the conditions of the Reviewing Agencies and the following:

1. Approval will be received from all City agencies, as well as Allen County Highway, and the Fort Wayne-Allen County Airport Authority.
2. Secondary development plans will be reviewed by the Plan Commission.
3. The following waivers for building height are/*are not* approved:
 - a. The smelter building up to 140 feet tall.
 - b. The warehouse up to 75 feet tall.
 - c. The tank house up to 90 feet tall.
 - d. The E-Waste building up to 115 feet tall.
 - e. The Leach plant up to 80 feet tall.
 - f. The Cu-Line Buildings up to 80 feet tall.
4. A site lighting plan will be submitted subject to staff review and approval and will include location, height, and cut sheets for all fixtures.
5. Any dumpster screening will be constructed with either a wood or a vinyl fence or masonry structure and will include a gate.

Exurban Public Hearing Questions

For Exurban:

What resources does the company have to address accidents? Where does funding come from? What assets do they have to address an accident?

What material will be brought into the community and how? On what type of vehicles? Which roads? How many trips per day, week, month? What times of the day or night? Are the routes near schools? Will certain roads need expansion or additional maintenance by the city or county as a result of their activities?

-How will the facility's presence affect local traffic patterns? As a recent example, the Amazon facility near the airport has been a logistical nightmare in terms of the semi traffic, semis using private roads, driving down the wrong side of the street, jackknifed across the road. Traffic lights added at taxpayer's expense.

What are the plant's hours of operation? What noises does it make? How loud? The project cites hydrological recovery methods which usually involve acidic and/or alkaline solutions- what materials are being brought in to make these solutions? How often will they need to be replenished with more raw material?

Since the plant's environmental controls involve things like Reverse Osmosis filtration, bag houses, and scrubbers that will filter pollution, how will filtered contaminants be disposed of?

What will on-site storage safety and accident responses look like? Failure to produce contingency plan was specifically cited as an issue at the Aurubis facility in Buffalo, NY and won't be fully addressed until the end of 2022 according to news reports.

What are the emissions? What hours of operation? Where will prevailing winds transport the emissions? E.g, who is downwind from the emissions?

Water: Evaporation ponds imply collection and disposal of un-evaporated solids. How will these ponds be used? How are they insulated from groundwater? Can the company provide a labeled version of their 3d model of the proposed plant, showing what type of operations are taking place?

What is the "boneyard" in their diagram for?

What are the impacts on the city's water treatment plant?

EXHIBIT "E"

What can you tell us about the inputs? Mixed Waste Electrical Equipment (WEEE), Auto Industry waste, General scrap, Industrial waste, Incinerator Bottom Ash (IBA)
What sorts of contaminants will you be testing for and what thresholds would be cause for rejecting the material?

What will happen with any source materials that are rejected due to contamination?

Your website mentions attractive gas pricing as one of the benefits of the Indiana location. What will be gasoline be used for in your operations?

Website states that "plastics can be used as a fuel source" - how does this occur? Does it involve incineration? Are processes like pyrolysis proven to be safe?

For City of Fort Wayne Officials:

Does this proposed land use support environmental justice and community development goals established in the wake of Chemical Waste Management's closing?

Is this development compatible with current zoning ordinance?

What are you doing to ensure stakeholder inclusion? Especially for LEP & health-burdened community members?



A Summary in Response to Site Committee Questions

Exurban is excited to share details concerning this transformational opportunity for southeast Fort Wayne. This project, employing state-of-the-art technology, is poised to make Fort Wayne a leading community in North America for the recycling and repurposing of non-ferrous (non-iron) metals.

Simply put, the City's ID2 zoning ordinance defines a recycling facility as a site that, "receives distinct and recognizable solid waste items...[which] are recycled, reprocessed, and treated in order to return those products to a condition where they may again be used in new products" and that it "must have not more than ten percent (10%) by volume of the solid waste that passes through the facility ultimately taken for final disposal."

The Exurban facility is specifically designed to separate and prepare recycled non-ferrous metals to create marketable materials (pure metal products and metal alloys) for downstream use in manufacturing, such as copper wire, electronic components, computer chips, semi-conductors. Therefore, not only is Exurban a green industry, but the marketable materials also that will come from this facility will allow other manufacturers to produce their goods in a more sustainable fashion. Finally, Exurban's "zero-waste" facility is unique in that it will only process carefully analyzed blends of refined products that are 100% recyclable, meaning it will produce no solid waste.

The recycling process will work this way: inputs into the facility will include a variety of specific non-ferrous metals, which will be processed in small batches according to composition. Outputs from the facility will be limited to refined non-ferrous and precious metals, and other alloys suitable for immediate use in manufacturing. In addition, some iron, silica, and carbon rich aggregate will be produced, which is suitable for immediate use as a concrete replacement and concrete enhancement product.

In addition to positioning Fort Wayne as a leader in this green industry, the Exurban facility has the potential to be a dramatic economic development engine for the city. The proposed site, currently owned by the Redevelopment Commission, currently is listed on the property tax records as having \$0 assessed value. This project will add tens of millions of dollars of assessed value to the site, meaning that the property will transform from producing zero tax revenue into one that is a major contributor of property taxes within the City. In addition, the site is expected to employ 155 individuals with average salaries between \$50,000 to \$75,000, further adding to the economic impact of the development. Exurban will be an equal opportunity employer and will work within the community to train its workforce with the goal of hiring locally.

EXHIBIT "F"

Be assured, at every step Exurban will comply will all federal, state, and local laws regarding the operation of this facility, including seeking all applicable environmental permits. Exurban will commence environmental permitting upon receipt of preliminary approval by Fort Wayne Planning Department. This will include permits from IDEM Air Quality Division, and additionally, as determined by state and federal law, permits from Land Quality Division and Water Quality Division.

Exurban is the culmination of decades of collective experience in the metals recycling sector. That experience, coupled with years of research and development, have led to the specific design of this proposed project. While Exurban is a new company and its process innovative, its team know the metal recycling sector well and are excited to bring the knowledge, and opportunity, to Fort Wayne.

The Exurban team looks forward to working with the community, to making Fort Wayne it's home and to build on strong synergies with existing leading recyclers already active in the Fort Wayne Area.

Best Regards,

Wes Adams
Co-founder
Exurban Indiana, LLC.