ORDINANCE NO. 05-92

AN ORDINANCE APPROVING A REZONING OF FOUR PARCELS ON 2.425 ACRES FROM R-6 (MULTI-FAMILY RESIDENTIAL DISTRICT) AND R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO O (OFFICE) WITH TEXT LIMITATIONS FOR THE PROPERTIES LOCATED AT 653, 665, 695 AND 701 WEST CENTRAL AVENUE (WEST CENTRAL DOCTORS)

WHEREAS, the Planning Commission at its meeting of July 20, 2005 recommended approval of a Rezoning of four parcels on 2.425 acres from R-6 (Multi-family Residential District) and R-1 (Single-family Residential District) to O (Office) with text limitations for the properties located at 653, 665, 695 and 701 West Central Avenue (PC 05-048), and

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Delaware, State of Ohio:

SECTION 1. That the Rezoning of four parcels on 2.425 acres from R-6 (Multi-family Residential District) and R-1 (Single-family Residential District) to O (Office) with text limitations for the properties located at 653, 665, 695 and 701 West Central Avenue , be the same and is hereby confirmed, approved, and accepted, with the following text limitations, as proposed and submitted by the applicants:

1. The following uses shall be permitted by right:

    a. Offices – administrative and professional
    b. Medical and dental offices, health & allied services

2. There shall not be any uses permitted as a conditional use per the requirements of 1141.02(b).

3. The following uses shall be permitted as an accessory use as a subordinate building or use when it is clearly incidental to and located on the same lot as the principal building or use, as provided for in 1141.02(c).

    a. Off-street parking and loading area.
    b. Fencing and screening.
    c. Signs.
    d. Trash receptacles.

SECTION 2. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

VOTE ON RULE SUSPENSION: YEAS___ NAYS___
ABSTAIN ___

PASSED: Nov 14, 2005 YEAS 7 NAYS 0
ABSTAIN 0

ATTEST: Cindy Moore
CITY CLERK

Windell Wheeler
MAYOR

ZONING TEXT LIMITATION

Rezoning of Parcels 51934204002000, 51934205006000, 51934205001000, and 51934206004000 from R-1 Single-Family Residential District and R-6 Multi-Family Residential District to O Office District with Text Limitations

Planning Commission Case PC05-048

As the owner(s) of the below listed property, I/We request the following zoning text limitations be included in the rezoning of the property from R-1 Single-Family Residential District & R-6 Multi-Family Residential District to O Office District for Planning Commission Case PC05-048.

Paul W Krouse Nov. 9, 2005
653 West Central Avenue (parcel #51934204002000)

665 West Central Avenue (parcel #51934205006000)

695 West Central Avenue (parcel #51934205001000)

Victoria A Jarnich 11/9/05
701 West Central Avenue (parcels #51934206004000)

A. **Permitted Uses**

The following uses shall be permitted by right:

1. Offices – administrative, and professional
2. Medical and dental offices, health & allied services

B. **Conditional Uses**

There shall not be any uses permitted as a conditional use per the requirements of 1141.02(b).

C. **Accessory Uses**

The following uses shall be permitted as an accessory use as a subordinate building or use when it is clearly incidental to and located on the same lot as the principal building or use, as provided for in 1141.02(c).

1. Off-street parking and loading area.
2. Fencing and screening.
3. Signs.
4. Trash receptacles.



Memorandum

TO: **Petitioners**
FM: **Grandview Estates Homeowners**
DT: **November 07, 2005**
RE: **Negotiated Agreement in response to Rezoning Request Delaware Planning Commission Case PC05-048 and Delaware City Council Ordinance No. 05-92**

Background
On June 27, 2005 the property owners of properties located at 653, 665, 695 and 701 West Central Avenue petitioned the Delaware City Planning Commission to rezone their properties from R-1 Single-family and R-6 Multi-family Residential to "Office District". The petitioners submitted documentation offering "Text Limitations" with their application thereby narrowing the range of proposed uses under the Office District classification.

The planning commission processed the application with the first hearing being held on July 20, 2005. Upon completion of the due process requirement, the planning commission acted to recommend the requested rezoning with text limitations and transmitted their recommendation to the city council.

At the Delaware City Council meeting on August 22nd the citizens of Grandview Estates expressed strong opposition to the proposed rezoning. The city council scheduled additional hearings on the matter and suggested that the citizens and petitioners meet to determine if agreement could be reached. In keeping with their desire for an equitable solution, council appointed Councilperson Dave Berwanger to assist in facilitating appropriate discussions between the parties.

The residents with their consultant have been involved in numerous meetings including meetings with the city planning staff, the city attorney, and the petitioners, aimed at first establishing a factual baseline reflecting the history of actions related to the properties in question and secondly, requesting clarifications related to zoning practice in the city. The residents have also met independently on a number of occasions to explore their options. The residents' goals are targeted at a number of clear objectives: *"achieving finality on the persistent land use issues on West Central Avenue, limitation of building footprints and intense commercial activity, assurance of appropriate buffering, and respect of the adjacent residential neighborhood."*

Proposal Development
On October 18th the residents reviewed the city's prepared "Decision Matrix" and other related material including background research and a memorandum prepared by the residents' consultant setting forth "Options for Citizen Action". Following discussion of the various options, the citizens approved a course of action whereby they could support

conditional approval of the rezoning. The conditions are set forth as a part of this document, i.e. ***"Agreement for Negotiation"*** and are subject to discussion and acceptance by the petitioners and ultimately by city council.

The residents have developed this agreement in good faith, striving for a win-win solution between the parties, while recognizing that many of their original objections have not been met. Residents sincerely feel that this position is equitable for all parties.

The proposal suggests approval contingent upon two simultaneous actions. First, a broadening of the "Text Limitations" by city council to include only *medical and dental offices, health and allied services* * and applying appropriate safeguards already contained in the Zoning Code including, but not limited to, the application of requirements in Chapter 1166 and 1141 of the current code. The second action is the modification of the restrictive covenants on the respective properties by the applicable Sections of Grandview Estates and that they be made a part of the deeds of the affected properties. It is the opinion of the residents that such action would reinforce the goals of the neighborhood residents and meet the expressed intent of the petitioners.

*** Please note the changes to this proposal which are listed below.**

Negotiated Agreement

1. **Agreed that the proposed "text limitations" in the applications be broadened to include those uses identified within Chapter 11.41 (b)(4) of the City of Delaware Zoning Code, i.e. *(4) Medical and dental offices, health & allied services, and in addition, administrative and professional offices.* Additionally, all uses shall comply with Sections 1141.08 and 1141.09 as defined in the Delaware Zoning Code per 10-26-05.**

2. **Amend the Restrictive Covenants on the following parcels as recorded in the Delaware County Recorders Office:**
    - **653 West Central Avenue # 51934204002000**
    - **665 West Central Avenue # 51934205006000**
    - **695 West Central Avenue # 51934205001000**
    - **701 West Central Avenue # 51934206004000**

    Following is the amended wording to be appended to the applicable deeds:

    1. **Said premises shall be used exclusively for single-family residence purposes and /or medical & dental offices, health and allied services, administrative, or professional offices.**
    2. **Any structure or building erected, placed or suffered on said parcel shall not exceed existing square footage in floor area and**

shall not exceed 18 feet in height above grade. Buildings shall incorporate four-sided architecture, i.e. all facades will be treated equally. There shall be no outbuildings permanently appurtenant thereto.

3. **Said structure, if used for other than single-family purposes, shall comply with Chapter 1166 of the City of Delaware Zoning Code.**
4. **Each structure shall be limited to one (1) sign, which shall not exceed four (4) feet in total height from the ground, and shall not exceed 3 feet by 4 feet or 12 square feet in total sign area, OR the sign shall be attached flush to the exterior of the building and shall not exceed eight (8) square feet in surface area. No sign shall be intermittently illuminated or animated. No external light source shall be directed toward any sign.**
5. **Any external safety lighting shall be attached to the building(s) and shall not exceed 12 feet in height and shall not cast light upon any adjacent residential area, nor be colored or flashing. No pole lamps shall be erected on properties.**
6. **Structures built on said lot(s) shall resemble residences; said structures shall not be flat-roofed and shall be built of natural materials. The exterior of the structures shall exclude fiberglass, vinyl/aluminum siding, and/or cement block unless said block is covered by stucco or other equally accepted material which will entirely disguise the block construction.**
7. **Color of paint or material covering structures shall be of earth tones or white, and be consistent with the appearance of residences in the surrounding neighborhood.**
8. **All ground-mounted mechanical equipment shall be completely screened by year-round evergreen landscaping/hedge. Dumpsters likewise, must be screened by a solid fence and year-round evergreen hedge maintained in good condition.**
9. **Should any structure(s) existing as of this date be destroyed or replaced said new structure shall meet all of the required setback and yard requirements of the zoning category in place, shall not exceed 18 feet in height above grade, and shall reflect neighborhood residential architectural characteristics.**
10. **Modification of these covenants shall extend for successive periods of ten years each unless proposed changes shall be approved in writing by the owners of the legal title to at least two-thirds of the owners in Grandview Estates.**

In conclusion, the covenants contained herein in paragraphs 1-10, inclusive, shall run with the land hereby conveyed and shall be binding upon the Grantee, any heirs, executors, and future assignees.

It is recognized that the City of Delaware is not a party to these covenants and therefore not responsible for their enforcement. However, it is hoped that the city would make every effort to recognize the importance of the covenants to the welfare of Grandview Estates and make its residents aware of proposed rezoning activity in the vicinity of the neighborhood to the degree that it is practicable in carrying out their zoning and other land use responsibilities.#

NOTE: Following discussion and negotiation by the applicants and representatives of the residents of Grandview Estates, the above agreement was supported unanimously on November 07, 2005. Meetings with affected "Sections" of Grandview Estates will be conducted in the near future for the purpose of obtaining the required approval of 66 percent of the residents in each of those sections prior to filing the amended deed covenants upon the affected properties in the Delaware County Recorder's Office.

PRESERVE AMERICA
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Planning *and* Community Development
CITY OF DELAWARE, OHIO

MEMORANDUM

DATE: September 30, 2005

TO: Delaware City Council

FROM: R. Thomas Homan, City Manager

VIA: David M. Efland, AICP, Planning & Community Development Director

RE: West Central Avenue Rezoning Options

Background
Since the last hearing on this item before Council, Councilman Berwanger, staff (including Planning and the City Attorney) have met with the applicants and surrounding property owners. The most recent meeting took place on Thursday, September 29 in Council Chambers and can be characterized as a positive exchange of information and ideas between all parties. The outcome was that a small group of neighbors and the applicants intend to meet to further refine and discuss additional items that could be included as part of private deed restrictions on the subject properties. Thus, the applicants requested that the zone change item be tabled for a month to accommodate discussions.

Decision Matrix
In order to help Council in its decision making process with respect to the proposed zone change, staff has prepared a detailed assessment of the various zoning and development options related to the West Central Avenue rezone case, which is available should anyone wish it.

I have attempted to summarize the information into the attached Rezoning Options Decision Matrix. The matrix summarizes options based on 6 generally used criteria for such cases and provides guidance based on staff's professional judgment with respect to the relative likelihood of each criterion given the option. Additionally, staff has attempted to outline the potential benefits and drawbacks of each approach in order to ensure that Council, the applicants, and the surrounding neighborhood understand the broad ramifications of their decisions.

Conclusion
After extensive analysis, staff has concluded that the option that provides the fastest time frame, most certainty of potential uses, offers the best protection (property rights) to the property owners (applicants) and to the surrounding property owners, is in conformance with the Comprehensive Plan, and will ensure that the uses on the subject properties conform to the Zoning Code is to approve the rezoning with text limitations as requested (Option "A"). If the homeowners association and applicants couple the zone change with the option "C" in the matrix to include additional private deed restrictions relative to such items as landscaping, buffering, etc., the highest level of property rights protection and neighborhood protection can be achieved in the fastest time frame all in conformance with the Comprehensive Plan.

Cc: Dan Bennington, City Attorney

West Central Ave. - Rezoning Options Decision Matrix

	Rezoning Options	Time	Certainty of Uses	Protection of Property Owners	Protection of Surrounding Neighborhood	Comprehensive Plan Concurrence	Use Conformity
A	Approve the rezoning as proposed (Office with text/use limitations)	FAST 2005	HIGH text/use limitations would exclude potentially higher impact uses	HIGH This would allow the four properties to be zoned for the uses desired by the applicants and uses allowed historically	HIGH Surrounding property owners will know with certainty the uses that can be placed on the site, easier expansion would mean that additional improvements are more likely to occur, and limits higher impact uses of the O District.	YES The comprehensive plan map indicates this area to be Office / Flex Office	HIGH The uses would now conform to the Zoning Code
B	Deny the proposed rezoning	FAST 2005	MEDIUM The current uses would remain nonconforming and any future uses would be residential or substituted	LOW This would allow the existing uses to be 'grand fathered' but would make expansion all but impossible and would allow for conversion to residential uses	MEDIUM The existing uses could remain but difficulty of expansion would mean that no additional improvements would be likely to occur (landscaping, fencing, etc.). Additionally, uses could be substituted for other equally non-conforming uses with unfriendly owners	NO The Comprehensive Plan calls for Office/Flex Office Uses	LOW The existing office uses would be non-conforming
C	Amend Private deed restrictions or other private agreements to include negotiated items	FAST No City involvement	N/A	HIGH Property owners would obviously have to agree to any additional restrictions and be willing to enforce them	HIGH Property owners would obviously have to agree to any additional restrictions and be willing to enforce them.	NO The Comprehensive Plan calls for Office/Flex Office Uses	LOW The existing office uses would be non-conforming
D	Rezone to Office Without Use Limitations	FAST 2005	HIGH The uses would be those allowed in the O district	HIGH This would be a straight zoning to Office District and would be a good case on its face	LOW Surrounding property owners would know that only office uses could be established but straight O zoning would allow for drive thrus, banks, etc. that may not be easily buffered from the residential uses	YES The comprehensive plan map indicates this area to be Office / Flex Office	HIGH The uses would now conform to the Zoning Code
E	Rezone to B-3 Community Business District	MEDIUM early 2006	HIGH Uses would be those allowed in the B-3 District	HIGH Effectively upzone these properties making them more marketable and giving an economic incentive to aggregate individual properties into larger tracts	LOW This would extend retail zoning to both sides of Central Ave. which could introduce uses with potentially high impact even with code mandated buffers given the proximity of residential uses	NO The Comprehensive Plan calls for Office/Flex Office Uses	HIGH The uses would now conform to the Zoning Code
F	Amend Chapter 1151 Non-Conforming Uses, Buildings, Structures, and Lots	SLOW August 2006	N/A The uses themselves would be unaffected citywide	HIGH Existing nonconforming use owners would be allowed reasonable expansion rights balanced with reasonable upgrade requirements without additional process	MEDIUM Surrounding property owners would know the rules of expansion upfront and would be guaranteed certain improvements if the expansion was large enough. Uses would be very difficult to sunset, however.	NO The Comprehensive Plan calls for Office/Flex Office Uses - but the Plan is supportive of slightly expanded non-conforming rights	LOW Changes to allow expansion of non-conforming uses would allow them to continue in a District where they are not allowed by right
G	Rezone to B-3 Community Business District with a Planned Business Overlay	MEDIUM 2nd quarter 2006	HIGH This would establish a negotiated use list specific to these properties	MEDIUM While uses would be certain, this would potentially add significantly to the overall regulations for these properties from signage to landscaping, buffering, and building materials	MEDIUM A negotiated process would result in a known use list but is equally likely to result in trade-offs based on cost, regulatory burden, and the economic viability of these small sites	NO The Comprehensive Plan calls for Office/Flex Office Uses	HIGH The uses would now conform to the Zoning Code

Updated 10/4/05

Planning Community Development Department

Planning *and* Community Development
CITY OF DELAWARE, OHIO

PLANNING COMMISSION / STAFF REPORT

CASE NUMBER: PC 05-048
REQUEST: Rezoning
PROJECT: West Central Doctors
MEETING DATE: July 20, 2005

APPLICANTS & OWNERS

Paul Krouse	Richard Carter	Judith Held	Victoria Fomich
653 W Central Ave	665 W Central Ave	695 W Central Ave	701 W Central Ave
Delaware OH 43015	Delaware OH 43015	Delaware OH 43015	Delaware OH 43015

REQUEST
Rezoning of four parcels on 2.425 acres from R-6 (Multi-family Residential District) and R-1 (Single-family Residential District) to O (Office).

PROPERTY LOCATION & DESCRIPTION
The property is located at 653, 665, 695, and 701 W Central Ave. The zoning R-1 (Single-family Residential District), R-6 (Multi-family Residential District). The surrounding zoning is a mix of R-1 & R-3 (Single-family Residential District), R-6 (Multi-family Residential District), PO/I (Planned Office/Institutional), and B-3 (Community Business District).

BACKGROUND
The applicants propose to rezone the properties to O (Office District) which is consistent with the Comprehensive Plan.

STAFF ANALYSIS

- **LAND USE**: The area consists of three office buildings (665, 695, and 701 W. Central) and one residence (653 W Central). It is believed from City records the office buildings were constructed as office buildings and not conversions of residential. Previous versions of the Zoning Code, which were in place at the time these buildings were constructed, permitted office uses within certain residential districts. The office uses appear to have been present since the early to mid-1960s and appear to have co-existed with the homes along W. Central with minimal adverse impacts. Grady Memorial Hospital is just east of the properties.

  Central Avenue is slated to be widened, in phases, at targeted intersections to relieve traffic congestion. This widening combined with high traffic volumes impact the desirability of these properties to be used, or continued to be used in the case 653 W Central, as residential. In the present residential zoning classification, the office users cannot rebuild, except in conformance with existing code, should a fire, natural disaster, or other destruction result in repair costs exceeding 50% of the replacement value. Additionally, any improvement or alteration proposed by the owners cannot exceed 50% of the replacement value without similar conformance requirements.
- **DENSITY/INTENSITY**: The Comprehensive Plan recommends Office/Flex Office uses for the properties, which reflects the current land use pattern and character of the area.
- **TEXT LIMITATIONS**: See the attached Text Limitations for the proposed rezoning of the parcels. These are intended to make future land uses compatible with the residential neighborhood in the area. The limitations will only allow administrative, professional, business, medical, dental, and health & allied services uses. These uses are the most compatible with the existing surrounding uses and consistent with the existing office uses.

  Staff distributed a signature sheet requesting the property owners to agree with the text limitations being proposed. All signatures have been obtained.

STAFF RECOMMENDATION
Staff recommends approval of the Rezoning of 653, 665, 695, and 701 W Central Avenue in accordance with the Comprehensive Plan from R-6 (Multi-family Residential District) and R-1 (Single-family Residential District) to O (Office District), with text limitations.

FINDINGS OF FACT
The proposal meets all applicable Code requirements.

REVISED: 07/11/05

ZONING TEXT LIMITATION

Rezoning of Parcels 51934204002000, 51934205006000, 51934205001000, and 51934206004000 from R-1 Single-Family Residential District and R-6 Multi-Family Residential District to O Office District with Text Limitations

Planning Commission Case PC05-048

As the owner(s) of the below listed property, I/We request the following zoning text limitations be included in the rezoning of the property from R-1 Single-Family Residential District & R-6 Multi-Family Residential District to O Office District for Planning Commission Case PC05-048.

Paul W Krause
653 West Central Avenue (parcel #51934204002000)

665 West Central Avenue (parcel #51934205006000)

695 West Central Avenue (parcel #51934205001000)

701 West Central Avenue (parcels #51934206004000)

A. Permitted Uses

The following uses shall be permitted by right:

1. Offices – administrative, business, and professional
2. Medical and dental offices, health & allied services

B. Conditional Uses

There shall not be any uses permitted as a conditional use per the requirements of 1141.02(b).

C. Accessory Uses

The following uses shall be permitted as an accessory use as a subordinate building or use when it is clearly incidental to and located on the same lot as the principal building or use, as provided for in 1141.02(c).

1. Off-street parking and loading area.
2. Fencing and screening.
3. Signs.
4. Trash receptacles.

Motion: Long/VanGundy moved to approve Application PC 05-047 subject to the Staff conditions, specifically to Staff conditions 5 and 6 that we would re-import the language relating to the shade trees and to the fencing and incorporating all the staff recommendations specifically those two and that it include the baseball field. (5 in favor, 0 opposed) MOTION APPROVED

10. **Application PC 05-041 – Mingo Park Recreation Facility Addition Administrative Review:** A request by the City of Delaware Recreation Services Department for Administrative Approval of a 3,280-square foot Recreation Center for the Mingo Park Facility located at 500 E. Lincoln Avenue.

    Motion: VanGundy/Morrison moved to approve Application PC 05-041 with the Staff recommendations. (5 in favor, 0 opposed) MOTION APPROVED.

11. **Application PC 05-042 – Advanced Auto Parking Lot Administrative Review:** A request by Advanced Auto Parts Distribution Center for Administrative Approval of a new 215-foot by 300-foot asphalt parking lot addition for the Advanced Auto Parts Warehouse located at 1675 U.S. Route 42 South.

    Motion: Hazlett/Morrison moved to approve Application PC 05-042 subject to the Staff recommendations. (5 in favor, 0 opposed) MOTION APPROVED.

12. **Application PC 05-043 – Methodist Theological School Maintenance Barn Administrative Review:** A request by Corna/Kokosing Construction Company, representing Methodist Theological School of Ohio for Administrative Approval of a 2,900-square foot maintenance barn to be located at 3081 Columbus Pike.

    Motion: Long/Hazlett moved to approve Application PC 05-043 subject to the Staff conditions with the exception of Staff condition no. 3 that it read the access drive and parking area need to be constructed in accordance with code and condition no. 4 that the approval not approve the lean-to and if the lean-to is to be added that they would need to come back for another review of that but incorporate all the rest of the conditions. (5 in favor, 0 opposed) MOTION APPROVED.

13. **Application PC 05-048 – West Central Doctors Rezoning:** A request by Judith Held, Richard Carter, and Paul Krouse for approval of a Rezoning from R-1 (Single-family Residential District) to O (Office), with text limitations for the properties located at 653, 665, and 695 W. Central Avenue and a request by Victoria Fomich for approval of a Rezoning from R-6 (Multiple-family Residential District) to O (Office) for the property located at 701 W. Central Avenue, with text limitations.

    Motion: VanGundy/Hazlett moved to approve Application PC 05-048 with the Staff recommendations. (4 in favor, 1 opposed [Morrison]) MOTION APPROVED.

14. **Application PC 05-049 –Cheshire Road Properties Rezoning:** A request by Cheshire Developers, LLC, representing Robert and Susan Shaw, Anthony and Cheryl Pinto, Bernard and Rebecca Moretti, Carol Margaret Wooten, and Cheshire Road, LLC, for approval of a Rezoning of 6.076 total acres from A-1 (Agricultural District) to B-4 (General Business District) with text limitations for the five properties located on the south side of Cheshire Road, east of US Route 23.

    Motion: Long/VanGundy moved to approve Application PC 05-049 with text limitation and those text limitations be identical to the Sturgis project previously approved by the Planning Commission and that the actual language be attached prior to going City Council. (5 in favor, 0 opposed) MOTION APPROVED.

MEMORANDUM

TO: City of Delaware Council
FM: Dale F. Bertsch, FAICP, RLA
DT: September 12, 2005
RE: Public Hearing Statement on Ordinance No. 05-92

My name is Dale F. Bertsch and I am appearing tonight representing the citizens of Grandview Estates who have submitted the petition in opposition to the issue regarding the rezoning of the four lots on W. Central Avenue within said development (Ordinance No. 05-92)

First, I would like to thank Council, and especially Councilperson Dave Berwanger for supporting and hosting the meeting between the residents and the petitioners. The meeting provided us an opportunity to exchange information and clarification on a number of issues. It was especially helpful to have City Planning staff present to comment upon history, substance and application related to the Zoning Ordinance and the Comprehensive Plan.

Secondly, we would like to once again go on the record as opposing this rezoning. We feel that there are substantial facts and issues surrounding this case that justify denial at this time. It is important to note that nothing the petitioners for this rezoning wish to do would require the proposed rezoning. Following is a summary of what we feel are the pertinent facts and issues:

- **All of the deeds of the lots in question have restrictive covenants stating that "...said premises shall be used exclusively for residence purposes, also as physician's office in conjunction with said residence."** *Examination of this statement indicates that the existing uses as professional offices without a residence are actually illegal.*

  We recognize that it is not the City's responsibility to enforce "restrictive covenants". We do feel however, the City should not knowingly encourage, be a party to, or take action contrary to such legally binding instruments.

- **The zoning ordinance (8.18.99) requires that that any conversion of dwelling units, to uses other that residential, must meet minimum lot size, lot coverage, yard dimensions, off street parking, etc.** *The lots in question do not meet minimum lot size, rear (side) lot requirements, parking or minimum buffering requirements. Considering that future expansion of W. Central Avenue (per the Major Thoroughfare Plan) these lots will be further reduced. Rezoning will only exacerbate an already poor land use pattern and not be in the best interests of the residents or*

the City. The cost for right-a-way acquisition will undoubtedly increase with the rezoning.

- **The recently adopted Comprehensive Plan requires design standards minimizing impact upon adjoining neighborhoods.** *This could mean that additional buffering and/or care be exercised in placing any use on these lots other than residential.*

- **The applicants for rezoning have suggested "text limitations" for uses upon these lots (should the rezoning be approved) to: administrative, professional, medical, dental, and health & allied services uses.** *There are serious questions as to what basis of law "text limitations" can be applied by planning commissions and/or municipal officials (administrative or appointed). The use of text limitations by the planning commission has been widely viewed as contract zoning.*

  The use of text limitations are referenced within the Delaware Comprehensive Plan therefore possibly justified however; we feel that the process itself needs careful research regarding the legal foundation and application. The use of " use or text limitations" has generally been interpreted to be limited to Board of Zoning Appeals or other quasi-judicial boards and/or commissions. Another option would be the use of "Planned District".

  There also appears to be some conflict in the zoning text itself when it describes Permitted Uses as "financial, institutional, banks" then separately " offices-administrative, business and professional". We have been told that the applicant's intent is to not include a bank yet; I would argue that reasonable people (including realtors and future purchasers of the property) could think of banks as both administrative and professional. This is moot however since the concept of "text limitations" is questionable.

- **The existing uses on the properties do not meet the requested zoning requirements.** *Side yard and buffering requirement are just two examples of such deficiencies. Rezoning of non-compliant properties prejudges the granting of future variances ... a questionable legal action. The transfer of non-conforming structures and uses also raise serious questions.*

- **Just a year ago (9-7-04) a Planning Staff Memorandum to the Planning Commission, Council and residents (FilePC04-092) stated that rezoning of properties along West Central in the vicinity of Grandview Estates should be indefinitely tabled to more fully consider a comprehensive approach addressing the issues raised along West Central Avenue.** *Was such a study completed? Were the property*

owners notified as noted in the memorandum? Or has it been determined that the issues are no longer valid, or that a comprehensive approach should not be taken rather, just let rezoning dictate City policy within this area?

Clearly, if any area within the City deserves a comprehensive examination it would be the West Central area. With exploding growth including substantial vacant and zoned land exist within the Central corridor examples include property at the corner of Houck Road, Georgetowne Centre and Troy Road Center. Additionally, the City is building a new connector (western by-pass) and Plans exist for the future widening of W. Central Avenue. Approval of this zoning could negatively affect the market and future growth patterns radically, if not tragically. There are even unresolved questions related to the existing hospital in its present configuration and services to the community.

The properties in question were platted with the intent that they would be residential (the old zoning ordinance recognized the need for neighborhood oriented services e.g. doctors who would serve their neighbors). The requested rezoning could impact the direction for broader types of commercial activity. I would argue that such a change in direction there needs to be a careful examination and, if approved, the application of extensive redevelopment standards. For example the need to look at existing street patterns, lot sizes, and other protective actions aimed at supporting the health and welfare of the neighborhood.

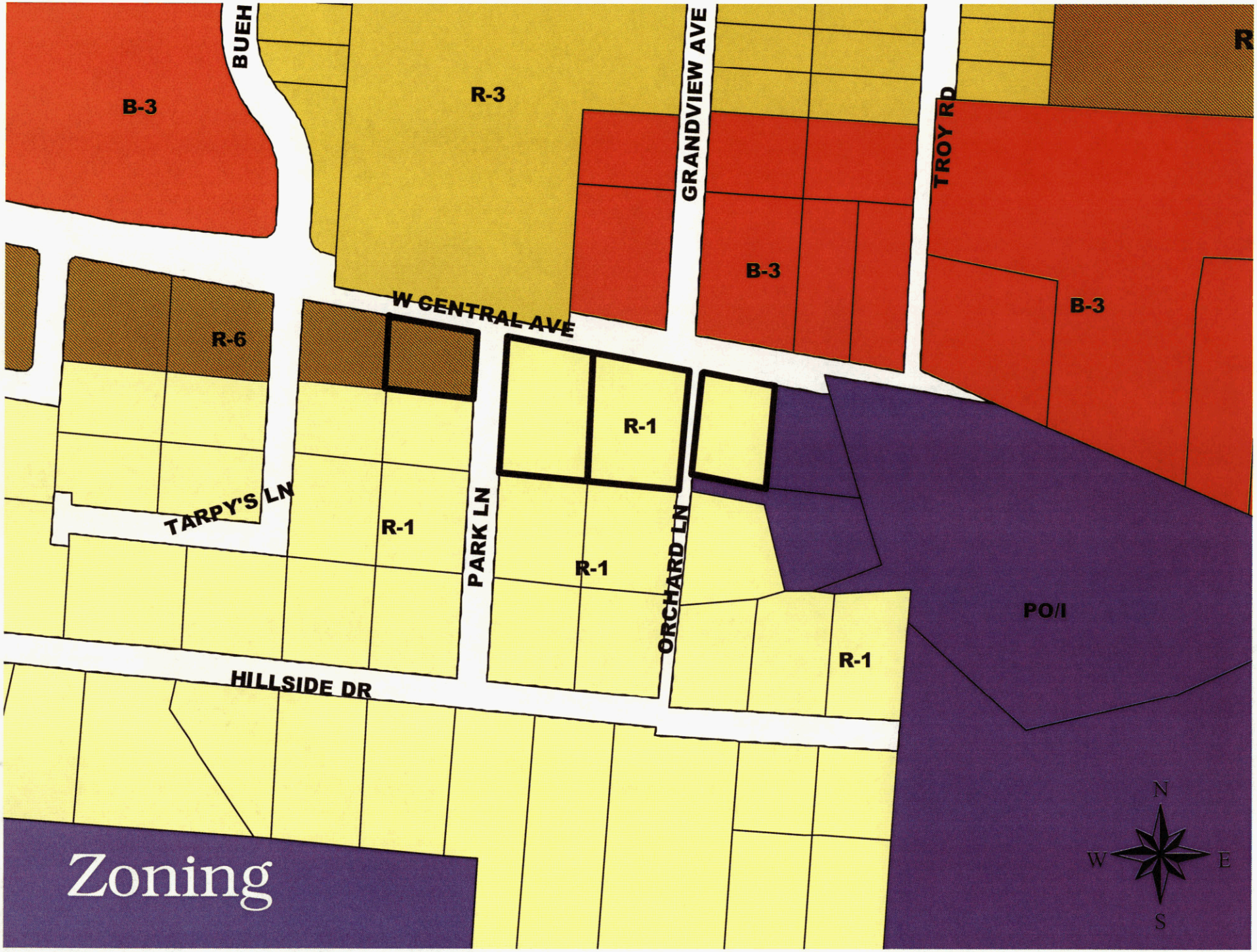
As a final point I would like to revisit the Council's action when adopting the Comprehensive Plan (Item 20: Ordinance No. 04-24; February 23, 2004).

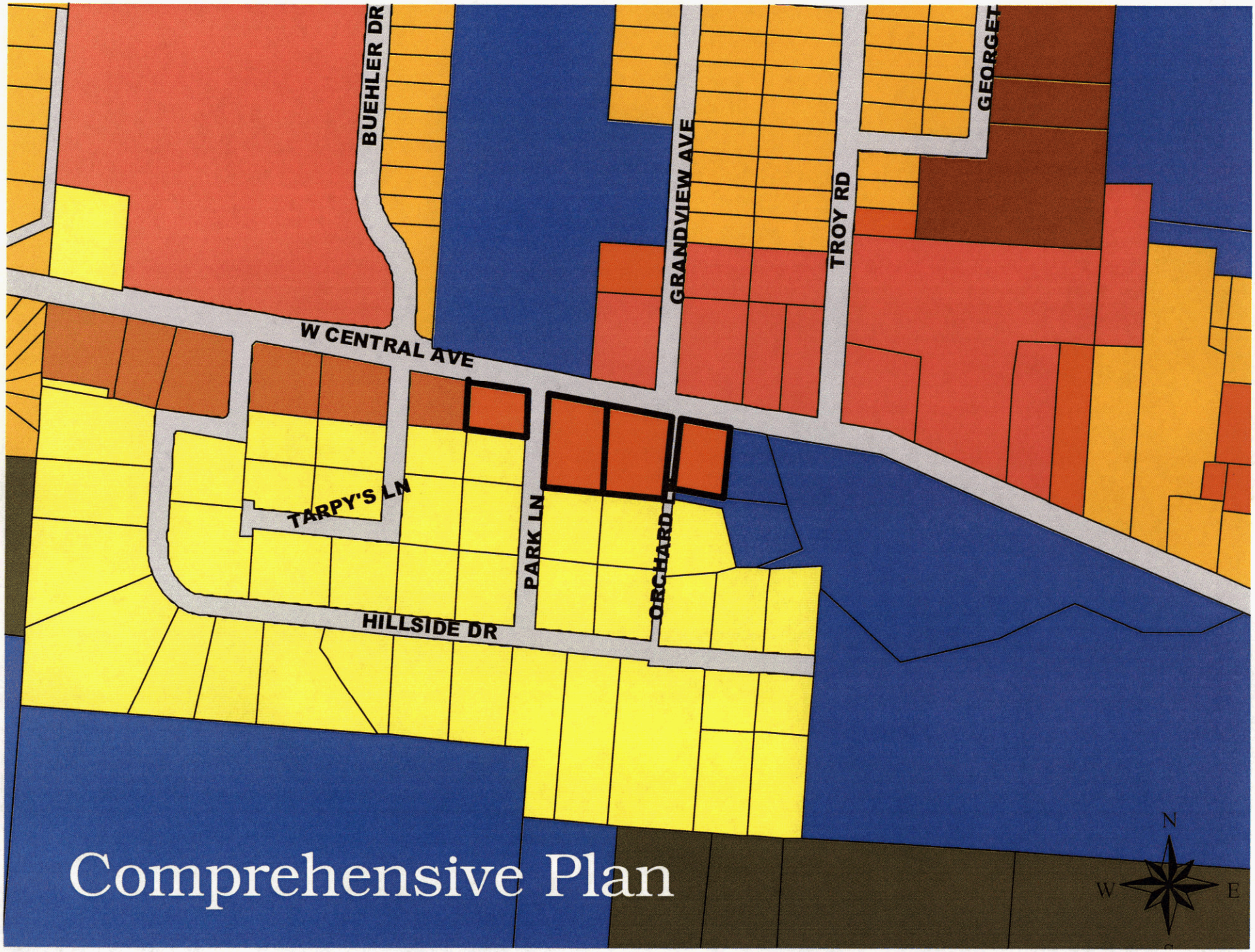
- *The Planning Commission had recommended (on a split vote) that the W. Central Avenue properties be designated as Office/Flex-Office with "Text Limitations and ...design standards to ensure compatibility with the neighborhood" Staff had recommended low-density single family residential.*
- *However, during the Pubic Hearing and the ensuing discussion there were strong and convincing arguments placed in the record (Moore, Wheeler, Berwanger, Santos, Cuckler) directing that the areas remain as is or in some cases go back to R-1 or R-2. Following public comment, the Council on motion directed that "...the area on West Central Avenue be reverted back to residential with the current zoning..." The motion passed (5-2).*
- *There was specific mention that there was substantial zoned and undeveloped/unused properties in the western area of the City and serious questions if more was needed.*
- *Considering the Council's action why does the Plan reflect the Planning Commission's position v. Council's?*

- *Nothing in the area has substantially changed except now the residents are galvanized in their opposition to the proposed rezoning and feel strongly that the proposed action is not in the public interest.*

In closing I would suggest that this application for rezoning be denied. An option would be to direct a comprehensive study of the West Central Corridor aimed at examining what policy Council wishes to apply. Such a study should consider the resident's opinions and how good planning practices should be applied.

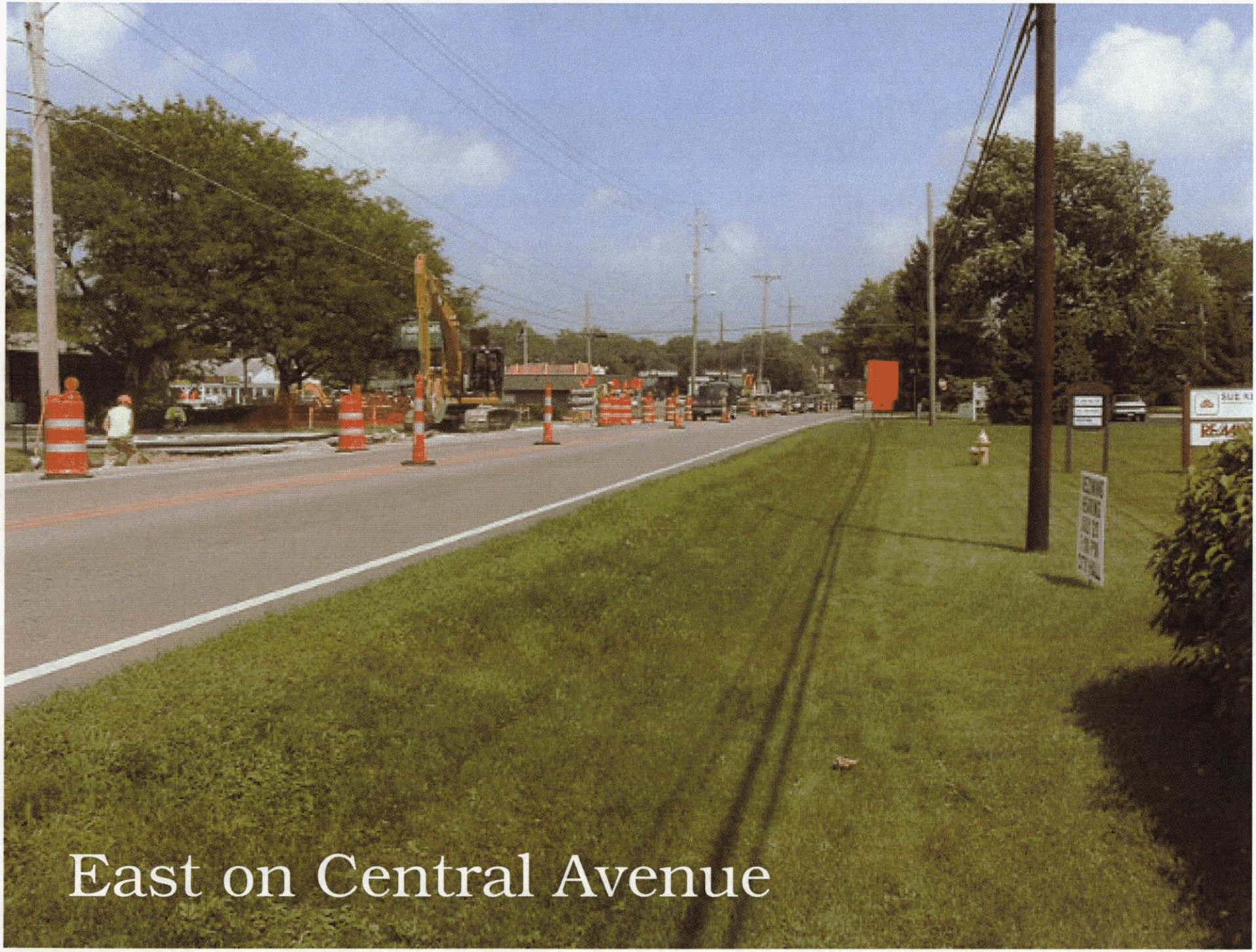
The residents look forward to your decision and once again thank you for this opportunity and your patience.


B-3
BUEH
R-3
GRANDVIEW AVE
TROY RD
R
B-3
B-3
W CENTRAL AVE
R-6
R-1
TARPY'S LN
R-1
PARK LN
R-1
ORCHARD LN
PO/I
R-1
HILLSIDE DR
N
W
E
S
Zoning


BUEHLER DR
GRANDVIEW AVE
TROY RD
GEORGET
W CENTRAL AVE
TARPY'S LN
PARK LN
ORCHARD
HILLSIDE DR
N
W
E
Comprehensive Plan



West on Central Avenue



East on Central Avenue


653 W. Central Ave. (Krouse)

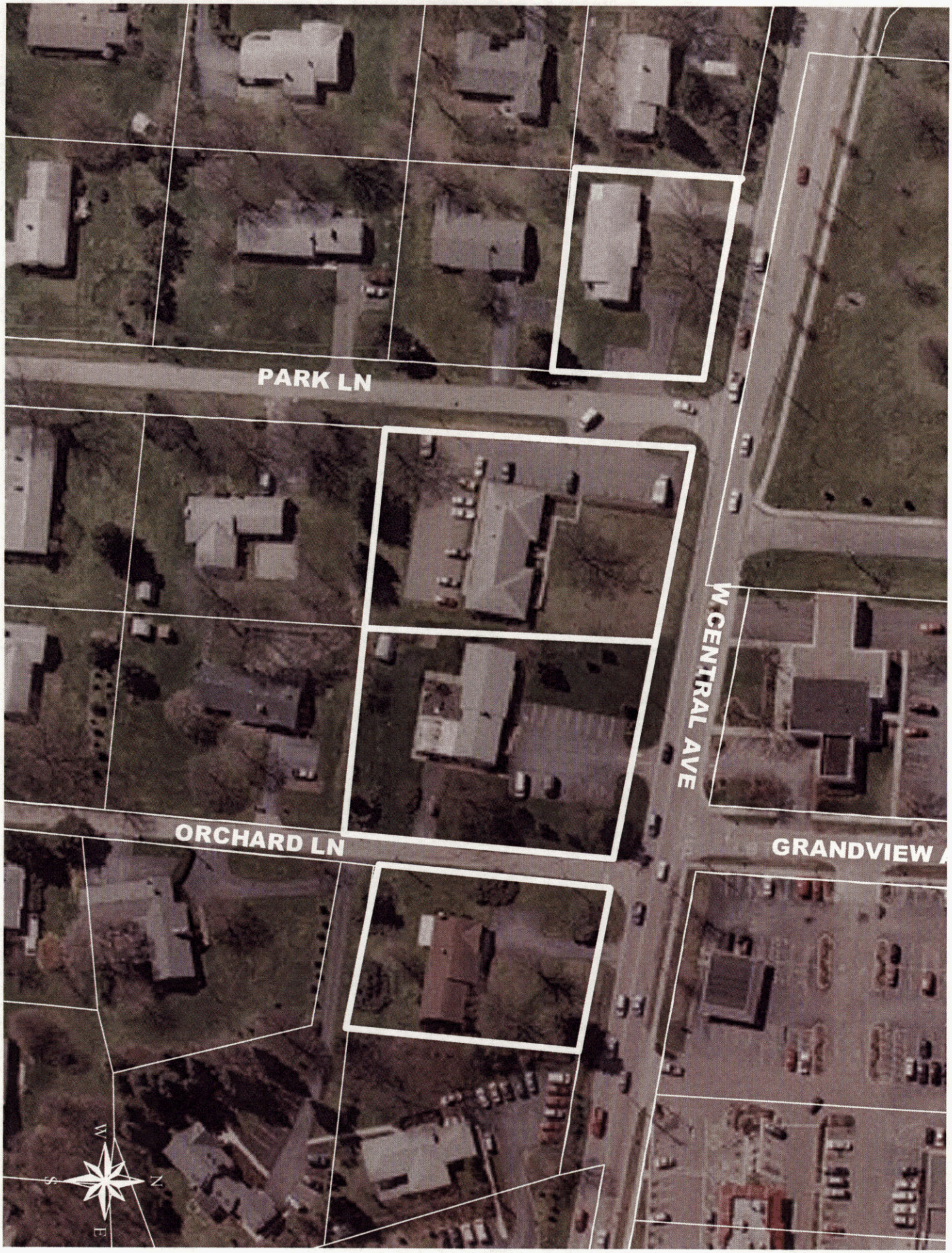


665 W. Central Ave. (Carter)



695 W. Central Ave. (Held)

701 W. Central Ave. (Fomich)


PARK LN
W CENTRAL AVE
ORCHARD LN
GRANDVIEW A
W
S
N
E


TARPY'S LN
W CENTRAL AVE
HILLSIDE DR
BUEHLER DR
PARK LN
WESTWOO
BARRETT ST
GRANDVIEW AVE
TROY RD
GEORGETOWNE DR
NORTHWOOD DR
W
Z