

**VANDEBURGH COUNTY
REZONING BOARD
FEBRUARY 23, 2004**

The Vanderburgh County Rezoning Board met in session this 23rd day of February, 2004 at 6:02 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The Rezoning petitions were heard during the course of the regularly held Commission meeting.

President Fanello: Now we'll move into the rezoning portion of the meeting.

<p style="text-align:center">First Readings: VC-2-2004 Petitioner: Stan Newingham Address: 8845 Vienna Road Request: C-4 with Section 4 to Ag</p>
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President Fanello: First item on the rezoning agenda is to approve the minutes of the previous meeting.

Commissioner Mosby: Motion to approve the minutes of the previous meeting.

Commissioner Crouch: Second.

President Fanello: So ordered. And we have a first reading, VC-2-2004, request C-4 with Section 4 to A.

Commissioner Mosby: Motion to approve on first reading.

Commissioner Crouch: Second.

President Fanello: And so ordered. We have no final readings, so—

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered. Drainage Board will start in ten minutes.

(The meeting was adjourned at 6:03 p.m.)

**VANDEBURGH COUNTY
REZONING BOARD
MARCH 15, 2004**

The Vanderburgh County Rezoning Board met in session this 15th day of March, 2004 at 7:02 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. Rezoning petitions were heard during the course of the regularly scheduled Commission meeting.

President Fanello: Now we will move into the rezoning portion of our agenda. I think it will go real quick.

**First Reading: VC-3-2004
Petitioner: Jagoe Land Corporation
Address: 3015 Galaxy Drive
Request: Change from Ag to PUD**

President Fanello: We have one first reading, VC-3-2004, Jagoe Land Corporation, change from A to PUD.

Commissioner Mosby: Motion to accept on first reading.

Commissioner Crouch: Second.

President Fanello: So ordered.

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 7:02 p.m.)

**Commission Meeting Reconvened:
Approval of Encroachment Permit for 12100 Bridlewood Drive**

(The meeting was reconvened at 7:03 p.m.)

Commissioner Mosby: Motion to withdraw my motion to adjourn.

Commissioner Crouch: And I'll withdraw my second.

President Fanello: So ordered.

Kevin Winternheimer: Let me explain what this is, it's a request for an encroachment into a public utility easement. Somebody mistakenly built a house within one foot of that easement. They're requesting a temporary encroachment permit. They have a sale pending and would like to consummate their sale. This is in anticipation that they will file a vacation proceeding to vacate that one foot strip. This is 12100 Bridlewood Drive, and it's a one foot strip along the south side of lot 75 into the public utility easement. It looks like my form. You didn't change anything did you.

Ted Ziemer IV: No, sir.

Kevin Winternheimer: I prepared the form for them to sign. It's been signed by the request, permittee, owner, Sue Reid. I request your approval of it. I don't see any problem. He's gotten letters from the utilities, they didn't have any problem with it. I anticipate somebody will be filing a vacation.

Ted Ziemer IV: I have these letters. Do you want them?

Kevin Winternheimer: Okay, you can just give the copies of the letters to Madelyn.

President Fanello: Yeah, she needs those for the record.

Kevin Winternheimer: I would request your approval. I talked to John, he didn't have any problem with it. Any questions?

Commissioner Mosby: I was going to say, I asked John about it this afternoon, and he didn't have any problems either.

Commissioner Crouch: Can you state your name, please?

Ted Ziemer IV: Ted Ziemer.

Commissioner Crouch: Well, I thought you looked familiar.

Kevin Winternheimer: In the crowd I didn't see him sitting out there. I thought maybe something happened and he didn't show up. I just didn't see him.

Commissioner Mosby: I will make a motion to approve the vacation.

Commissioner Crouch: Second.

President Fanello: So ordered.

Ted Ziemer IV: Thank you for reconvening.

President Fanello: You're welcome.

Kevin Winternheimer: I'm sorry I missed you. I just didn't see you.

Commissioner Mosby: Now, I'll make a motion to adjourn the reconvene here.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The reconvened meeting was adjourned at 7:04 p.m.)

CONSENT ITEMS:

Jail Expenses:

United Consulting Architects and Engineers: \$37,529.24

James L. Shireman: \$55,000

Travel Requests:

Health Department (3) Weights & Measures County Engineer
Center Assessor

Employment Changes:

Circuit Court Pigeon Assessor County Clerk

Auditor: Submit Annual Report and Summary of 2003 Fixed Assets.

Health Department: State HIV Grant Renewal Request.

Sheriff: Submit Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Madelyn Grayson	Linda Nalley	Gary Hohman
Ben Kunkel	John Stoll	Ken Robinson
Marsha Abell	Les Shively	Marlin Goebel
Dennis Hudnall	Kenny Maasberg	Ted Ziemer IV
Others Unidentified	Members of Media	

**VANDERBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY
REZONING BOARD
APRIL 19, 2004**

The Vanderburgh County Rezoning Board met in session this 19th day of April, 2004 during their regular Commission meeting at 5:51 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding.

President Fanello: We will move on into our rezoning meeting. Is there anybody here for rezonings?

**First Readings: VC-4-2004: Petitioner: Hirsch Family Limited Partnership
Address: 1501 N. Burkhardt
Request: AG to C-4**

**VC-5-2004: Petitioner: Olympus Investments LLC
Address: Hwy 57 North and Rushton
Request: C-4 to M-2**

**VC-6-2004: Petitioner: GK Development LLC
Address: 3016, 3020, and 3030 N. Green River Road
Request: AG to R-3; C-4 to R-3**

President Fanello: We do have three first readings, VC-4-2004, from A to C-4. Do I have a motion to accept first reading?

Commissioner Mosby: Motion to accept zonings on first reading.

Commissioner Crouch: Second.

President Fanello: So ordered. VC-5-2004, C-4 to M-2.

Commissioner Mosby: Motion to accept zoning.

President Fanello: First reading.

Commissioner Mosby: First reading.

Commissioner Crouch: Second.

President Fanello: So ordered. VC-6-2004, A to R-3 and C-4 to R-3.

Commissioner Mosby: Motion to accept on first reading.

Commissioner Crouch: Second.

President Fanello: So ordered.

**Final Reading: VC-2-2004: Petitioner: Stan Newingham
Address: 8845 Vienna Road
Request: C-4 to AG**

President Fanello: We do have one final reading, VC-2-2004, C-4 change to A. Is there anyone here to speak to that rezoning? I don't see anyone. I don't think there was anything unusual about it.

Commissioner Crouch: It's a down zoning.

President Fanello: Yeah, it is a down zoning.

Commissioner Mosby: I know Bev Behme was going to be here, because I talked to her on the phone today, but I don't have a problem with it. It's a down zoning. I'll make a motion to accept VC-2-2004.

Commissioner Crouch: Second.

President Fanello: So ordered. We will need a roll call vote. Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Yes.

President Fanello: And I vote yes. And if there's—

Commissioner Mosby: No other business, I'll make a motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 5:55 p.m.)

CONSENT ITEMS:

Travel Requests:

Health Department (3)	Auditor (1)	County Assessor (1)
Commissioners (1)	Treasurer (1)	Veterans Services (1)

Employment Changes:

County Highway (1)	Auditor (1)	Superior Court (1)
Burdette Park (6)	VCCC (1)	

Requests for Service: Treasurer (1).

Commissioners:

Release of title on totaled vehicle.

Escrow agreement: Integrator.com, Mel-Kay Electric, Williams Brothers.

Declaration of Open Burning Emergency.

Auditor: Covered bridge certification.

Treasurer: Submit monthly report for March 2004.

Health Department: Permission to request appropriation.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Madelyn Grayson	Norma Duckworth	David Ellison
Susan Harp	Pat Seib	Dennis Hudnall
Steve Craig	Others Unidentified	Members of Media

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY
REZONING BOARD
MAY 17, 2004**

The Vanderburgh County rezoning board met in session this 17th day of May, 2004 at 6:03 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regular Commission meeting.

President Fanello: We can begin the rezoning portion.

First Readings

President Fanello: We do not have any first readings.

Final Readings: VC-3-2004: Petitioner: Jagoe Land Corporation Address: 3015 Galaxy Drive Request: Change from Ag to Residential PUD Action: Approved 3-0

President Fanello: We do have one final reading, VC-3-2004, change from A to residential PUD.

Marco Dalucio: Good evening. My name is Marco Dalucio. I'm here this evening on behalf of Jagoe Land Corporation, seeking rezoning of about a little over 20 acres off of Green River Road, kind of indirectly off of Green River Road through Galaxy and Constellation on North Green River Road. Jagoe seeks to rezone this 20 acre parcel which is currently being used, and is designated as an agricultural property to a PUD to develop a 96 unit residential subdivision. We appeared before the Plan Commission a couple of weeks ago and received a favorable recommendation by a 10-0-1 vote. We have received, I think, we've been, we've also received drainage approval, the water line approval has been granted. Erosion control approval has been granted. Jagoe, as you probably know, has done these PUD's in the past several times in Vanderburgh County, and they've been hugely successful for them. There's a market. They tend to sell them out almost as fast as they can build them. So, there's a real demand for this type of housing in the area. I would point out that the comprehensive plan also has designated this area as a residentially zoned area, so, we think this is very consistent with the comprehensive plan. With that, Bill Jagoe is here with me this evening if you have any questions, along with Scott Buedel and Ron London who are the project engineers. I would be happy to answer

any questions you may have, or would request your approval of this rezoning request.

President Fanello: Are there any questions from the Commissioners? Is there anybody in the audience wishing to speak about this rezoning? I don't see anyone.

Commissioner Mosby: If there's nobody in the audience and no other questions, I'll make a motion to approve VC-3-2004, 3015 Galaxy Drive.

Commissioner Crouch: Second.

President Fanello: So ordered.

Commissioner Mosby: Now you need a roll call.

President Fanello: Roll call vote. Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Yes.

President Fanello: And I vote yes. The rezoning passes.

Marco Dalucio: Thank you very much.

President Fanello: And there is no other business on the agenda, so—

Commissioner Mosby: My kind of rezoning.

President Fanello: I would entertain a motion to adjourn.

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:05 p.m.)

CONSENT ITEMS:

Jail Expenses:

James L. Shireman, Inc.: \$55,000

United Consulting Architects and Engineers: \$19,545.87

Travel Requests:

Health Department (3) County Assessor (1)

Employment Changes:

Circuit Court (3) Co-Op Extension (1) Burdette Park (3)

Health Department (1) Prosecutor (5) Treasurer (1)

VCCC (1)

County Clerk* : Submit Monthly Report for March 2004.

* Was incorrectly submitted as Treasurer's Monthly Report on Agenda.

Sheriff: Submit Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello

David W. Mosby

Suzanne M. Crouch

Bill Fluty

Kevin Winternheimer

Tammy McKinney

Madelyn Grayson

Dave Dial

Dan Dowell

John Stoll

Dennis Hudnall

Steve Craig

Marco Dalucio

Bev Behme

Others Unidentified

Members of Media

**VANDERBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDERBURGH COUNTY
REZONING BOARD
JUNE 21, 2004**

The Vanderburgh County Rezoning Board met in session this 21st day of June, 2004 at 6:10 p.m in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. Rezoning petitions were heard during the course of the regular Commission meeting.

President Fanello: Now we will move into the rezoning portion of our meeting.

**First Readings: VC-7-2004: Petitioner: Arbors at Eastland
Address: 6649 Old Boonville Highway
Request: Ag to R-3**

President Fanello: We have one first reading, VC-7-2004.

Commissioner Mosby: Everybody's leaving.

President Fanello: I know.

Commissioner Mosby: It's not that long. Boy, that scared them.

President Fanello: Change from Ag to R-3. Are there any questions on the first reading?

Commissioner Mosby: Motion to accept first reading.

Commissioner Crouch: Second.

President Fanello: So ordered.

**Final Readings: VC-5-2004: Petitioner: Olympus Investments LLC
Address: Highway 57 North
Request: Change from C-4 to M-2
Action: Approved 3-0**

President Fanello: We have one final reading, VC-5-2004, Olympus Investments LLC, change from C-4 to M-2.

Krista Lockyear : Are you ready?

Commissioner Mosby: Go ahead.

Krista Lockyear : Good evening. My name is Krista Lockyear, on behalf of Olympus Investments LLC, the landowner of the property that's located on an area bounded by Highway 57, I-164, Baseline Road, and Ruston Lane. As you probably have seen from your reports, we presented this to Area Plan Commission a few weeks ago and received a unanimous recommendation from the Planning Commission that we rezone this property to M-2 for a proposed industrial park. Olympus Investments LLC is managed by Evan Beck here locally, and his partner, Steve Kahre, is here with me tonight if you have any specific questions for them. At this point end users have not been determined, but with the location, obviously, I-164 and Highway 57 and adjacent to Vanderburgh County Industrial Park, the guys feel that this is a real good location for another industrial area. We ask for your approval tonight, and I would be happy to answer any questions you may have.

President Fanello: Are there any questions by the Commissioners? Are there any remonstrators in the audience?

Commissioner Mosby: Motion for a do pass on VC-5-2004, and call the roll.

Commissioner Crouch: Second.

President Fanello: So ordered. Roll call vote. Commissioner Crouch?

Commissioner Crouch: Aye.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Aye.

President Fanello: And I vote yes also.

Krista Lockyear : Thank you very much.

President Fanello: And there are no further rezonings.

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:12 p.m.)

CONSENT ITEMS:

Jail Expenses:

Peyronnin Construction Company: \$119,660.65

James L. Shireman, Inc.: \$55,000

Vectren Energy Delivery: \$12.50

Travel Requests:

Commissioners (2)

County Clerk (2)

Treasurer (4)

County Assessor (1)

Auditor (1)

SWCD (1)

Employment Changes:

Sheriff Department (2)

Burdette Park (3)

Prosecutor (1)

Health Department (1)

Pigeon Assessor (1)

County Clerk (1)

Prosecutor: Submit Federal Annual Certification Report.

EMA: Submit Grant Close-Out Paperwork.

Those in Attendance:

Catherine Fanello

David W. Mosby

Suzanne M. Crouch

Bill Fluty

Kevin Winternheimer

Tammy McKinney

Madelyn Grayson

Phil Lawrence

Ted Ziemer IV

John Stoll

Dennis Hudnall

Gary Hohman

Krista Lockyear

Others Unidentified

Members of Media

VANDERBURGH COUNTY

BOARD OF COMMISSIONERS

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDERBURGH COUNTY
REZONING BOARD
JULY 19, 2004**

The Vanderburgh County Rezoning Board met in session this 19th day of July, 2004 at 6:23 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regularly scheduled Commission meeting.

President Fanello: Now we'll move on to the rezoning portion of our meeting. As soon as I can find my agenda, Mr. Bodkin.

Approval of Minutes

President Fanello: Do I have a motion to approve the minutes of the previous meeting?

Commissioner Mosby: So moved.

Commissioner Crouch: Second.

President Fanello: So ordered.

First Readings

President Fanello: We have no first readings, and only one final reading.

Final Readings: VC-4-2004: Petitioner: Hirsch Family Ltd. Partnership Address: 1501 North Burkhardt Road Request: Change from AG to C-4 with UDC Action: Continued until 7/26/04

President Fanello: VC-4-2004, and Mr. Bodkin is at the podium.

Tom Bodkin: I am. Good evening, ladies and gentleman. We are here on a piece of ground along Burkhardt Road. In fact, this is about the last part of Burkhardt Road frontage that's not been developed. My client, the Hirsch family, owns a large, large tract, as you know, in fact, their land goes from Burkhardt Road to the interstate. The parcel at issue here is a 47 acre tract all along the

frontage of Burkhardt Road that's 700 feet deep and over 2000 feet long. We are requesting zoning it to C-4. The Plan Commission vote was six in favor, four against, and two abstentions. We have met extensively with the County Engineer with regard to the road issues on this parcel. We have given a use and development commitment, it's really a development commitment, I suppose, where we are agreeing to dedicate the necessary right-of-way for the extension of Vogel. That's one that is very critical to your long term plan, one that John was very, very interested that we do. The dedication will occur the entire width of the 700 foot strip of ground, so that Vogel begins it's process moving east. We also are dedicating the necessary right-of-way to widen Columbia, which you may recall is at the south end of this parcel, right by the Krispy Kreme donut shop, we'll be widening it. In fact, we've met with John extensively on that. Let me digress just a moment, the commitment is to dedicate the land, and that's exactly what we're going to do. As of today, or yesterday, I guess, we do have a signed purchase agreement on a two and one half acre parcel at that corner. I am not at liberty to tell you who it is, other than it's a local company that's been here a long time. That, obviously, will now necessitate us building Columbia. We've met with John several times about what that needs to be. It looks like it will probably be five lanes wide, at that point, with appropriate turn lanes. I can tell you also that we have, attempted, perhaps is the best word, since last October, on numerous occasions, to deal with Wal-Mart with regard to their letter of credit and whatever it is they are or are not going to do on that side of Columbia. We have dealt with three different people at Wal-Mart in the last nine months. We continue, they have a new young man as of a week or so ago, we've resent the same data to him, we're going to continue dealing with Wal-Mart, but Columbia will have to now be built, because we're going to have a sale. I can tell you also that our buyer, who is going to in addition to us, my client, will build Columbia. Our buyer is then going to start the road that runs north/south. It would be the equivalent to a frontage road along Burkhardt. Both these roads to county standards, both roads at whatever the County Engineer determines they need to be. That will happen now fairly quickly. We've also agreed with the County Engineer that we will not access Burkhardt Road, in terms of crossing Burkhardt, other than at Columbia, at Vogel, when it comes time to do that, Oak Grove is at the north end of my parcel. We also agreed that we will only access Burkhardt across from Florida, and across from Waterford, but those streets will not cross, they will not be cross streets. So, we'll access in and out potentially in those locations down the road, but we will not cross. So, we're limiting the access on Burkhardt as the County Engineer and EUTS had requested. The land immediately to the north of this strip is zoned M-2. Now, that's the land north of Burkhardt Road, I think all the way to Morgan and back to the interstate, or almost all that way. Directly across from this parcel, if you were to extend Oak Grove Road, I said Burkhardt, I meant Oak Grove, extend Oak Grove Road, the land immediately across, for some distance south, is zoned C-4. We're asking for C-4 for this parcel. There's a strip

of ground that's zoned C-2, and we have another strip of ground zoned C-4 right up to Vogel Road, basically, then we have more C-2, and then at the far end down by Columbia, right across from the two and half acre that we have a buyer for now, that is zoned C-4 as well. We believe, there is no question that the Master Plan calls for this entire area to go commercial. My clients own the biggest part of it, maybe not quite all of it, but a big chunk of it all the way to the interstate. At the Plan Commission meeting there was one other presentation, and I'm sure he's going to present again, but I'm going to leap on it ahead of time. I'm not sure you'd call it a remonstrance, it's kind of interesting, because you have no residential uses out here, so, we have other commercial people who want other things. One of the requests that have been made to my client that is not acceptable is that we agree to extend Columbia so that it curves down, and we pay part of the cost. That it curves down in to real estate owned by Regency. My client owns land all the way to the interstate. Columbia is going to be an extremely important road for us to access the southern part of our land as we get closer to the interstate. I can also tell you that right behind Wal-Mart, the property where there's an apartment complex built now, there is no dedication, at least as of last Friday, of any land to allow Columbia to be extended across that real estate. Columbia cannot go straight and hit the interstate from our land, because there's an apartment complex on the east end, right along the interstate, that comes up along the ditch. So, we're going to be required as we continue to develop going east to curve our road back to the north so as to provide access to our real estate. Again, Vogel, under your long term plan will go due east. I understand from EUTS they would like an overpass either there or at Columbia, probably both, none of us will be alive probably when it gets to the point of building it, but we are committing the real estate for Vogel. We also indicated to the County Engineer that as we come to the plat, which we will now do, because we have a potential buyer. Whatever studies he wants done, or whatever he wants done with regard to Columbia, for lights and such, will have to be done. That's simply a matter of the plat. So, our use and development commitment is to give you the land, and then we're committing to extending Vogel all the way across the parcel being sought, and restricting access to Burkhardt. If you have questions, I'll try to answer them. We have received, and perhaps you did too, one other letter from an interested party, again, I'm not sure if I would use the word remonstrance or not, that was a party that did not appear at the Plan Commission who had a number of requests that my client consider with regard to making, I hate to use the word commitment, because it's not really that, it was sort of like agree to build what I want you to build so it will look like what I want it to look like. We are not interested in dealing in that kind of a mode. This is C-4 ground, or we want it to be C-4 ground. The ground across the road is C-4. The ground immediately south is C-4. There are no use commitments on any of the real estate out here. So, the C-2 ground is C-2, the C-4 ground that's already zoned is C-4, there are no limitations on it's use. My client does not choose to

put limits on that use, at this point anyway. If you have questions, I would be glad to try to answer them.

President Fanello: Do either of the Commissioners have any questions? I only have one, will you be, and I sent, talked to Mr. Wischer and left him a message, will you be committing to a traffic impact study?

Tom Bodkin: Yes, but not in the use and development commitment. If I do that, I've got to go back to the Plan Commission, and I don't have time for that, I have a buyer. Our contract with our buyer requires us to build Columbia. Our discussions with John Stoll, as we've indicated here, we'll do whatever study he wants done at whichever road we're building at. Whatever needs to be done, that's what we'll have to do. That will happen at the plat, because it has to happen at the plat.

President Fanello: So, you have no problem doing the traffic impact study—

Tom Bodkin: No, ma'am.

President Fanello: —during the site review, or—

Tom Bodkin: That's correct. And that will happen at sub review probably.

President Fanello: At sub review, okay.

Tom Bodkin: Yeah, sub review.

President Fanello: Sub review, sorry.

Tom Bodkin: Correct, we do not have a problem. Whatever that requires, that's what we'll need to do.

President Fanello: Okay.

Tom Bodkin: This is kind of the opening, if you will, the opening shot (Inaudible) one of my clients with their very, very big piece of real estate. This is the front door to the rest of their real estate. There is no way they are going to develop it poorly, nor would you want to pay the money that it's going to cost to buy the land to develop it poorly. So, we're obviously not in the market of doing anything foolish to this real estate.

President Fanello: We just, we get those questions, and we just want to make sure and get them on the record.

Tom Bodkin: I understand. I can tell you at least my understanding. What we have committed to is what your engineer requested. That's why we put it in the commitments as we did.

President Fanello: Are there any remonstrators, or other interested individuals who would like to speak?

Les Shively: Madam President, members of the County Commission, my name is Les Shively, I represent Regency. First of all, before I get into specifics, I know, I'm sure Mr. Bodkin didn't do it intentionally, but he did misrepresent what my clients concerns are. You have access to the minutes from the Plan Commission meeting, and I want to make it very clear before I begin my presentation, so that there is no confusion in your minds, and, hopefully, no confusion in Mr. Bodkin's mind, that my client does not ask, does not ask that the Hirsch's or their successors in interest build anything on my clients property. That was never requested, never stated, and I'm not sure where Mr. Bodkin obtained that information. Let me first begin by making this statement, and I opened with this at the Plan Commission meeting. It's a foregone conclusion that the Comprehensive Plan calls for this area to go commercial. We're not here to debate the change in classification. But under your zoning ordinance, in particular 17.36...rather than read out the numbers I've made a copy for you.

President Fanello: Thank you.

Les Shively: It talks in terms of Commission action and commitments in conjunction with rezonings. As we get into this, I'm not going to read through all of them, but sub-paragraph (b) of 36.050 states the following: "The Area Plan Commission and the legislative body", which is this body, "shall pay reasonable regard to the following." I would call your attention to five, "reasonable development and growth". Now, this rezoning, by the petitioners spokespersons own admissions, takes a little under 50 acres which fronts Burkhardt Road, and it begins the process of changing to commercial classification all of that property that starts at Burkhardt Road, which the Hirsch's have control, that runs all the way to I-164. This is the moment in time, as you sort of light that fuse, that you should pay particular attention to your ordinance and say, hey, at the time we are going to change that classification, is everything in place to ensure reasonable and appropriate development? I would also submit to you that I think it's going to happen in my lifetime that once this property is rezoned it's not going to be too long before the rest of it takes off and we have fill out development all the way to I-164. I think we've all lived through the rapid development that has taken place in the Burkhardt Road corridor area, and I don't see any signs that things are going to slow down. The comments with regard to the use and development commitment, again, the petitioner indicates that they have done everything that

John Stoll has asked them to do. Have all of you received Mr. Stoll's memo that he prepared following the Plan Commission meeting? Mr. Stoll told me that the reason that he prepared this was because of some, shall we say less than clear statements made with regards to what the County Engineer's position was or was not. So, this very detailed, single spaced memo was given to you. I'm not going to read it to you, you've already read it, but let me hit the highlights. First of all, the first thing that Mr. Stoll says that, in his opinion, any plan that is presented that does not provide for an extension of Vogel in this manner is unacceptable. Vogel and Columbia are key concerns for him. Reading through his memo, it's not just dedicating right-of-way, which is all this use and development commitment does, it's talking about having a plan in place that sees that those roads and that appropriate traffic infrastructure is constructed. Towards the bottom of the first page of his memo he lists infrastructure improvements that he believes will be, that most likely will be necessitated by this rezoning. There's eight of them listed there. Other than dedication of a little bit of right-of-way that abuts this parcel, there is no commitment to construct anything. There's not even a commitment to do a traffic impact study. There's discussion about frontage roads, there's no commitment to build frontage roads. If you read the use and development commitment they've made very carefully, it's sort of a touchy, feely, well, you know, if it looks good, we may do it, we may not do it. There's not a commitment to do that. In short, Mr. Stoll concludes by saying that he is agreeable to this use and development commitment, with a few exceptions, but states that there must be assurances that the infrastructure improvements are able to be required through the subdivision review or site review process. Well, let me pick up on the last line of Mr. Stoll's memo, first of all, there is no guarantee and no requirement that this tract be subdivided, and go through the subdivision review process. In fact, what the petitioner has represented was quite candid at the Plan Commission meeting, he said they may subdivide, they may not. So, we have the site review process. Site review is constrained to look at that particular site. Their focus is extremely narrow. The only macro approach, in terms of impact that can be done to make sure that once this is set in motion, that everything is done properly, the infrastructure, it's not this right-of-way dedicated but actually built. We've seen what the problem is further up on Columbia Street, we've got halfway commitments. Is either through the subdivision approval process, and, again, there's no requirement that that be subdivided, or, right now, to use the power that you have, under 17.36.050. I'm going to come back in a moment and suggest to you what I think this Commission ought to do in the interest of good planning for the entire community. In so doing, let me go back, if I can, in recent history, take you down memory lane where development in this particular area, development that I was very much involved with. Crossroads is right up here at the corner, before the County Commissioners, Commissioner Borries, Commissioner Tuley and (Inaudible) approved that rezoning, they not only wanted a commitment of the roads within

our tract, but a commitment that we build this portion of Virginia Street on Regency's property (Inaudible), and this portion of Cross Pointe. We had to make that commitment in order to get our rezoning approved. We did that. My clients who's family had owned this land for a long period of time just like the Hirsch's made that commitment. In fact, had to borrow close to a million dollars to build out those roads. Not just dedicate, but to build the roads within their subdivision, dedicate right-of-ways through the subdivision, and then build out over on the Regency property where right-of-way had already been dedicated. Regency built the rest. That was appropriate sharing of the burden, certainly didn't put it on the county, but it was something that we, my clients, the Hartman family land trust, was required to do. In a moment you are going to hear from the Decem Group, which is working with several families that owned property on the east side, west side of Burkhardt Road for a significant period of time, and they have been required to make similar commitments. I'll let them speak for themselves. But, what we are asking here this evening, especially with regard to roads, especially with regard to Columbia, and, again, if you look at Mr. Stoll's comments about Columbia, contrary to what Mr. Bodkin said at Plan Commission and what he said here again this evening, Columbia is going to be necessary for the Hirsch property as it develops to the east. Columbia will never cross I-164. The most important reason for the, there is no right-of-way on the other side of I-164 to pick it up. Moreover, I doubt that that is a major, high priority project for Vanderburgh County or the Indiana Department of Transportation given their laundry list of much more important projects. John Stoll makes that clear. What Regency is committed to do, as this marketing map shows, is when Columbia gets to the point, they are going to carry Columbia the most logical place it can go, on their property, we will dedicate the right-of-way, and they are going to build Columbia. They're also going to build this little area up here, about 380' that fronts the property owned by the Hirsch's. Granted property that's not subject to this rezoning, but property that's going to be given a strong catalyst for rezoning and development. All we had requested is that in their use and development commitment, that when they do develop that property, that when they do rezone that property, assuming by that time that Regency will have already built Columbia, that they simply pay their one half share of the cost of Columbia Street. That maybe could be a year from now, it could be ten years from now, it could be 20 years from now. We're not asking for....that was the proposal we made. We are flexible, and we've been trying to work for at least a couple of months now with the representatives of the Hirsch family to work out something so that the burdens of paying for the actual construction of the roads is shared proportionately and fairly, especially when Columbia Street with all those folks doing development in that area. What we would ask for you to do tonight, we don't want to ask you to turn down the rezoning, because that would put these folks out for a year, and the land use classification is appropriate, but the plan is not appropriate. They are not sufficient commitments to build the infrastructure,

as John Stoll notes in his memo. What we would ask you to do is to send this matter back to the Plan Commission to cause appropriate commitments to be placed of record to see that Columbia, and all other necessary infrastructure is done. Maybe the simple solution is to modify the use and development commitment to require the traffic study. There are many ways we can accomplish this, I've just simply suggested one because no other ideas were coming from the other side. But, it is in the best interest of this community, and in fairness of all the stakeholders in that particular area that there be more than just dedication of right-of-way, that there be commitments to build the infrastructure. The time to do it is right now, when we have before us opening up this untapped area which is going to go all the way to I-164. I would be more than happy to answer any questions you have at this time.

President Fanello: Does either Commissioner have any questions? Thank you, Mr. Shively. Do you want to go ahead and speak, and then they can—

Krista Lockyear: Good evening, Madam President, members of the Commission, my name is Krista Lockyear. I'm here tonight representing Decem Investments, a developer of the real estate along Burkhardt Road to the west of this property. Also Glenn and Fred Hessman who are owners of 21 acres that are undeveloped currently on the southwest corner of Burkhardt and Oak Grove Road. I would like to pass out some maps, just to help orient you with the properties that are owned by my clients and that have been developed by my clients.

Madelyn Grayson: Krista, do you have an extra one for the record? Is that the Waterford Park?

Krista Lockyear: Yes, I've got a record copy here. One point of clarification that I would like to make, as you can see on the maps I went ahead and just quickly hand wrote in the properties that are zoned C-4. It's not the entire parcel of property across from what is being requested to be rezoned tonight. There are four individual plots that were zoned C-4, and in just a little bit I'm going to give you some history of my clients development, and I will explain how those C-4 zonings came about. Similar to Les and his clients, my clients do not oppose this rezoning. Obviously, this property is going to end up being a commercial development, and we're very much in favor of that. What we do oppose is unrestricted C-4 development that doesn't have any protection built in for the abutting land owners and surrounding developers. As your obviously aware, this area is rapidly growing and I also have a copy of the map from the most recent Comprehensive Plan. I've circled this undeveloped area, and it really brings in to focus how important starting this rezoning process is, as Les pointed out for the remaining unzoned, or non-zoned commercial property that the Hirsch's currently have. Many developers in this area, including the county, have invested

enormous amounts of money to cause this area to be the quality development area that it is becoming. These developers include Decem Investments, Regency, Cross Pointe, East Park Development, and Head Investments, LLC. Most of those companies constituted members that owned land out here similarly situated to the Hirsch's for years and years. It's only fair, and we're asking you to help protect the developments that these developers have installed to date, and help protect their land values so that we don't have a diminution into what has been built up to be a very nice area. We are not asking that these developers build the style building we ask them to develop. We don't care what way they make the commitments for quality control. It could be by way of use and development, it could be by way of private covenant, it could be by way of limitation on uses, although when we initially approached them, we felt that that would be more restrictive than simply asking for quality control, as opposed to limiting the uses. The history, like Les told you the history of his clients, when Decem developed most of this area that you see on the colored map that I passed out to you, came in to....and Barbara Cunningham was with the Area Plan Commission at that time, Barbara we would like to go C-4 zoning with this property, and she and the consensus of the Area Plan Commission and the Commissioners at that time, let's not bite off more than we can chew. Let's take it a step at a time, let's do it right so it is a quality development. They required Decem to come back and to rezone to C-2, at that time. Obviously, there are much, many fewer uses in C-2, the outside storage is significantly restricted in C-2, we had to restrict billboard uses, the ability to install billboard and pylon signs. All of that led to the type of development that we have out in the area at this time. When we did come up with the few C-4 uses that you see on your map, that I've pointed out, we had a particular user, and then came to Plan Commission with particular designs. The infrastructure, at that point, was already in place, under the C-2 overall development, and then asked to rezone up to C-4 grade, in order to accommodate the users, Southern Indiana Tire, Sonic, those type entities needed the C-4 zoning. Another example of a way that I keep saying quality controls can be implemented came about just recently with David Hirsch and Head Investments. David Hirsch sought to rezone a portion of the property that is at the northern end of your map, very close to Burkhardt and Florida, and wanted to go C-4 and came to our clients and said, this is what we want, can you support us? Again, we said, we're happy to support your C-4 zoning, but we want some assurances that you're going to make it as nice as we were required to make it. David Hirsch did agree, they entered into a private agreement that provided standard quality controls that you would find in a typical commercial covenant and restriction. That was perfectly agreeable to our clients and we moved forward. So, there are many methods that we can get these controls put in, but we really think it's only fair that all developers out there, in some way or another, are required to put the quality controls in. Outline of the major points we would like to see, and that's in my letter that I handed out with your packet; quality of

structures, simply facade materials, some restrictions that we don't have simply concrete block buildings built; limitations on outside storage. Clearly an example that I like to think of, we have Raffi's restaurant with a nice, outside seating area. I'm not sure patrons are going to enjoy sitting there if they have to look at an outside lawn equipment storage area. It's, we want to preserve the quality and the character of this area. Limitation on billboards and pylon signs, which Regency and Cross Pointe, as well as Decem and Head Investments have committed to. And some landscaping commitments, and we're not, again, we're pretty wide open on this, we're not dictating this much green space, this many trees, but it's the overall look and character of the area that we're after. As Les pointed out the roadway development, these developers that I mentioned earlier have installed roadways. They have made the commitments and followed through with the traffic lights, with the traffic impact studies. Whereas this is a blanket C-4 without a plan, we have gone step by step in implementing the plans and showing you the plans before we got the rezonings. The, it's kind of been alluded to and I was very familiar with it, because I helped out the developer that built the apartments behind Sam's. The exact scenario that Les outlined to you is what happened with Columbia, Wal-Mart came in for their rezoning and said we'll dedicate the right-of-way as a requirement to subdivision final platting. When my client came in to purchase that land, it was a large enough chunk of land they didn't have to follow through with the plat, so we went in to Plan Commission and Blaine Oliver said, sorry we don't need the plat filed. So, we have Columbia Street with not enough right-of-way dedicated now, and I think it's that, "we don't have to do it now because we'll catch it at the next stage of the game", mentality that led to that. Because we may not have the ability to catch it at the next stage of the game. Now you have the broad sweep, the broad view protecting abutting property values, and quality growth for the area that are both criteria that are set forth in the ordinance and in the state statutes as reasons that you can deny a rezoning. Again, I want to emphasize, we also don't want you to deny this rezoning. We're simply asking that you send a message to the developers, send this back to Plan Commission, get some written requirements that everyone can be assured will protect abutting land owners, will protect Vanderburgh County, and the development of the infrastructure in the future. I would be happy to answer any questions.

President Fanello: Are there any questions for Krista?

Commissioner Crouch: I don't know if this is a question you can answer, Krista, or maybe Bev, but if we at subdivision review, if we require construction of the roads, is that enforceable? Can we, I mean, can we—

Bev Behme: Well, during the planning of the subdivision, right-of-way and the actual construction is required. Subdivisions can be approved by Plan

Commission, and this is what happened with the Glass Subdivision, it wasn't recorded. So, until that subdivision is recorded the right-of-way and the conditions are not there.

Commissioner Crouch: So, the safest way to guarantee that is through use and development?

Bev Behme: Is the use and development, because then it's here at the zoning. Then, even if it would go to site review, they would come across the use and development and say, here's what you have to do. That includes the construction of the right-of-way, and the dedication of the right-of-way. If that's in the use and development commitment, there's no question as to whether or not they would do a subdivision, or whether or not it gets approved at site review.

Krista Lockyear: The other thing I might add, at site review and subdivision approval they are very limited to the exact land they are looking at, which is, I believe Mr. Shively said that as well. Whereas in zoning, you are authorized to look at abutting properties, comprehensive growth, what this does to the area, as opposed to simply the real estate that's being rezoned.

President Fanello: Thank you, Krista. Mr. Bodkin, did you want to rebut?

Madelyn Grayson: May we make a quick tape change please?

President Fanello: Sure.

(Tape Change)

Madelyn Grayson: Thank you.

Tom Bodkin: Very briefly, the area on his big plat that shows Columbia Street dipping down into Cross Pointe's property, that's not platted, that's empty real estate that's not been platted. As I indicated at the Plan Commission, who says that's going to be Columbia Street? My people own all the land north of that. We have reason to want Columbia to lay on the property line as we get that far east, so we have access to the road. If Columbia dips down, as Mr. Shively's map would show you, my parcel, basically, doesn't have access to it, because both sides of his Columbia are in his clients real estate. That's one reason why we're not interested in sharing the cost of building a road to his real estate so that we can lose the advantage of it. Secondly, that's miles and years down the road. The piece at issue here is 700 feet wide. It doesn't even get all the way back to the apartment complex. By the way, we're dedicating the right-of-way now. There's no problem like the apartment complex. The apartment complex doesn't

have any dedicated right-of-way at all, period, end of debate. We do, we're dedicating the right-of-way. As I indicated to you, we're going to have to build Columbia now because we have a buyer. So, the issue in terms of where Columbia is going to go is going to be an issue that is going to have to be decided by my client, his client, a lot of other people when we get there, but while it may not go over the interstate, and I would agree it can't go due east along my property line because it runs right into an apartment complex for which there was no dedicated right-of-way for Columbia about five years ago, let alone the other side of the interstate. It can indeed curve north with my property line and provide access to my 200 plus acres. Secondly, we are dedicating Vogel all the way across the 700 foot strip, which John was very interested in, as is EUTS, because that's the one that's going to be the big, major collector, I guess, in the middle. From what I understood from your engineer, he anticipates Cross Pointe Boulevard going due north, tying into Vogel as a way to get to Burkhardt. It's very interesting that everybody wants me to have my zoning, but only on their terms. I guess that's normal. Unfortunately, I'm not sure that's really the issue though. Let me turn to Krista's clients, Krista's clients have unrestricted C-4 properties right across the road. Now, you can talk about my C-4 use, then I might have somebody that doesn't want to look at Indiana Tire either, that's really an irrelevancy. All I heard, and all I read when I got the letter from Krista a couple three days ago was you come back to Plan Commission, let's draw restrictions on what you can do with your land, in terms of what the buildings have to look like, or what you can build, or whether you can do this or that. Across the road, in two different locations, is ground that is C-4, was rezoned C-4 by Krista's clients with no use restrictions. Now, the fact that Barbara Cunningham talked them into C-2, so be it. I don't believe there's any record that the property was ever brought to the Commissioners as a C-4 and turned down. It started as a C-2, it got a C-2. When they wanted to upgrade to a C-4, they upgraded to a C-4 with no restrictive covenants at all, none. By the way the covenant between David and one of these plaintiffs was a covenant that dealt with widening of, dealing with roads and dealing with what's going to happen when Florida Street got built. My clients own all of the land going to I-164. It is absolutely fascinating to me that somebody would suggest they're going to develop it in such a way as to cause it to go down in value. That's absurd. The only thing that's going to happen to the land across the street, once we get started, is that's it's going to go up in value. But, there is absolutely no basis for you or the Plan Commission to require me to agree with them what my buildings will look like. It's just simply not in the ordinance, and I submit to you that's not really the purpose for zoning. This land is zoned agricultural. Your Master Plan notes it's going to be commercial. That's what we're asking for is commercial. It's in keeping with your Master Plan. We're dedicating the right-of-way that your engineer wants. I've now told you, because we now have a sale on two and a half acres, we're going to have to do the traffic study and build Columbia, and that will have to happen, because it's got to be

subdivided to do it. It will be in on sub review with regard to that. As I read John's e-mail, perhaps I read it wrong, I got the impression that he basically reiterated what I just told you, if we did these things, that that was acceptable to him at this point for zoning. I would request that you grant this zoning so that we can move on with the issue. By the way, the frontage road issue, that's a word of art, the contract I now have with a buyer requires the buyer to build what...a frontage road is a road parallel to Burkhardt, alright? They are going to have to build that to county standards, and John's aware of that. That's the first opportunity to move the roads north and south parallel to Burkhardt, as well as now east and west off of Burkhardt. The restrictions we've given with regards to access to Burkhardt protect Burkhardt, protect our land too, quite frankly, and more importantly protect the people across the road. We're not going to be impacting their ability to get out of their land at, because we're only going to be crossing Burkhardt Road at Vogel, at Oak Grove, and at Columbia. Nowhere else will we cross Burkhardt Road. We're simply committing to that. I would request that you grant the zoning. If you have questions, I would be glad to try to answer them.

Commissioner Crouch: Mr. Bodkin, does the use and development commitment say that you're going to construct the road?

Tom Bodkin: The use, the development commitment says we will dedicate the right-of-way. It does not say, we did not commit to build all the roads, at this point. Only to dedicate the right-of-way.

President Fanello: Do you have anymore questions, Suzanne? Do you have any questions?

Tom Bodkin: Thank you.

President Fanello: Thank you, Mr. Bodkin. Will the, did you, will the road construction be addressed during sub review?

Bev Behme: If a subdivision is required. If, and I understand the one lot subdivision is going to be required on the first one, but that's just two and a half acres. That's not the rest of the 47. Parcelization, they do not require the dedication of roads. It has to be a subdivision. Then again, I'm not sure site review has jurisdiction to require right-of-way or the dedication or the construction of right-of-way. A subdivision would require it, but, again, it has to be a recorded subdivision. A letter of credit would be put up in the amount that John requires for the roads, but there's no guarantee, at this point, that they'll be anything other than the one lot subdivision, right now.

President Fanello: And the traffic study, is that something that you can—

Bev Behme: If a subdivision is required, and anything that would be sold in increments of five acres or less, then subdivisions are going to be required. But, if one person developed, like Lloyd Crossing, then a subdivision would not be required, and an impact study would have to be done, I guess, at site review, and I'm not sure how much leverage site review has to require an impact study.

President Fanello: Do you have a question, Commissioner Mosby? Mr. Bodkin, does your client have any problem with putting the wording about a traffic study in the use and development commitment?

Tom Bodkin: The only problem is a time one, because, again, we now have a purchase agreement. If we change the use and development commitment, which as I understand your ordinance, we have to go back to Plan Commission, which then, and then come back to you, and that's just a timing problem. At the time we're at the Plan Commission we did not have a signed purchase agreement. We do now have a signed purchase agreement.

President Fanello: In order to expedite that, can we make that a requirement of this rezoning? A traffic impact study?

Kevin Winternheimer: If you put it in the zoning and make it part of the use and development commitment.

President Fanello: But it still has to go back—

Tom Bodkin: Right, as I understand the state law, if I make a representation to you that my client is going to do x, y, or z, and they don't, then you can undo the zoning. That's my understanding of the change.

Les Shively: You only have 90 days to do that under the statute.

Tom Bodkin: Well, so in 90 days if I haven't undertaken the traffic study, if the engineer wants it, then they can come back and ask you to undo the zoning. It's a timing problem more than anything else for us.

President Fanello: And I'm not really, it depends on, I don't know what your buyer, or how your buyer is going to develop, and I don't know what's going to happen up front, but my conversations with Rose today were, I'm not so concerned about the traffic study being done up front before you know exactly what's going to go in there, it's as you develop the property. Because the traffic impacts will change.

Tom Bodkin: Correct. The use makes such a difference as to what the study would show.

President Fanello: Exactly.

Kevin Winternheimer: If I might ask a question, Tom, what does one week do to you and your sale?

Tom Bodkin: One week is not a problem.

Kevin Winternheimer: Then I ask for comments from the other attorneys that are here. I appreciate your concern for not having to bounce back to the Plan Commission and then waiting and then coming back here, those things that you have outlined verbally, what if you reduced that to an agreement running to the County Commissioners, not part of the zoning use, but a separate agreement. That gives you time, John's not here, I don't know when John's coming back.

Commissioner Mosby: Wednesday.

Kevin Winternheimer: Wednesday. Review that with our County Engineer, and then they could just continue this rezoning until next Monday.

Tom Bodkin: I have no problem. I would be happy to do that, make it a private covenant to the county as long as Mr. Shively and Krista agree, that's reminiscent of another fight somebody had some time ago, as I recall about covenants, private covenants as opposed to being restrictive covenants, as opposed to being use and development commitments.

Les Shively: Mr. Bodkin, if you remember correctly the Court of Appeals upheld them.

Tom Bodkin: That's true they did. You're right. So, I guess, it's okay. We're happy to do that. Just want to make sure we don't get into any of that fight. I'll have it for you by Wednesday.

Kevin Winternheimer: Well, my concern is not whether you or your client will live up to their verbal commitments, my concern is that everybody understands what you're doing.

Tom Bodkin: Right.

Kevin Winternheimer: That way reduce it to writing, everybody understands what's to be done.

Tom Bodkin: We will prepare that tomorrow, fax a copy to Les and Krista, and you, and be prepared to submit it as a private covenant running with the land enforceable by Vanderburgh County, and come back and visit—

Bev Behme: (Inaudible. Mic. not on.)

Tom Bodkin: If you want to you can, but you always tell me that you don't want to.

Kevin Winternheimer: They don't build roads.

Tom Bodkin: I know. They also don't force me to either.

President Fanello: I appreciate that alternative. I don't doubt what you're saying.

Tom Bodkin: I understand.

President Fanello: It's just that—

Tom Bodkin: Be happy to do that.

President Fanello: —Kevin put it best, reducing it to writing.

Tom Bodkin: Sure.

President Fanello: That's my concern is the traffic impact study. I don't know if the other Commissioners have additional concerns.

Kevin Winternheimer: So, if you go that route, what you would be doing is continuing this rezoning, everybody would have the right to come back and say what they want at next week's meeting at 5:30.

Tom Bodkin: Would be happy to do that.

Kevin Winternheimer: Do you have any comments on that, Mr. Shively?

Les Shively: On behalf of Regency, we're certainly willing to give it a shot.

Kevin Winternheimer: Yeah, no one's committing to vote for or against it.

Les Shively: I understand. We're certainly willing to give it a shot.

Kevin Winternheimer: We're just reducing to writing what his client, and clarifying what his client is willing to do.

Les Shively: We're willing to give that a shot.

Tom Bodkin: One week from tonight?

President Fanello: Yes. Do we need a motion to continue this?

Kevin Winternheimer: Yes, we'll just continue this matter until next week's meeting at 5:30.

Commissioner Mosby: I'll make a motion that we continue the rezoning for Burkhardt Road, VC-4-2004 until next Monday night at 5:30.

Commissioner Crouch: Second.

President Fanello: So ordered.

Tom Bodkin: Thank you.

President Fanello: Thank you, Mr. Bodkin.

(The rezoning portion of this meeting recessed at 7:11 p.m.)

**VANDERBURGH COUNTY
REZONING BOARD
JULY 26, 2004
(Continued from July 19, 2004)**

The Vanderburgh County Rezoning Board resumed their continued meeting from July 19, 2004 at 6:51 p.m. on July 26, 2004 in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regularly scheduled Commission meeting.

**Final Reading: VC-4-2004
Petitioner: Hirsch Family Limited Partnership
Address: 1501 North Burkhardt Road
Request: Change from AG to C-4 with UDC
Action: Continued until 8/2/04**

President Fanello: Rezoning, final reading for VC-4-2004.

Chris Wischer: Good evening, Chris Wischer here from Bamberger, Foreman, Oswald and Hahn. I'm here on behalf of the petitioner, the Hirsch family limited partnership. I'm here with David Hirsch who is a partner in that family limited partnership. This is a continuation of last week's rezoning meeting. You recall last week we came before you with a petition that included a use and development commitment. To remind you, that commitment, by that commitment our client committed to limit access to the 40 acre parcel that we plan to rezone to, directly from three locations, that being, when I say access, I mean access to Burkhardt Road, that being Florida Street, Vogel Road and Waterford Boulevard. In addition, of course, the real estate would be accessible from Oak Grove Road and Columbia Street extended. In addition, that use and development commitment called for the dedication of right-of-way for an extension of Vogel Road, the route and width to be determined at the time of site review or subdivision, but in the event of any subdivision or parcelization, that commitment preserves the extension of Vogel Road, as was required by your County Engineer. In addition that use and development commitment committed to dedicate such right-of-way as was necessary for an extension of Columbia Street along the southern border of the property to be rezoned. We also made a commitment regarding drainage, I don't believe that commitments been an issue. Concerns were raised during last week's meeting about, even though our client had committed the right-of-way, they had made no real commitment to pay for the road, and there was concern expressed about the need for traffic studies, if and when that was necessary during the development of the property. The meeting

was continued so that we could craft a private covenant, which we did, and we provided copies of that covenant last Friday to each Commissioner, to the County Attorney, to the County Engineer. I've provided copies to counsel for Regency who was here that night, and counsel for Decem Investments who was here that night. I have additional copies, unless you have a copy of the actual covenant.

President Fanello: I have my copy. Does everyone have a copy?

Kevin Winternheimer: I would like a copy.

Madelyn Grayson: I'll need one for the record also, Chris.

Chris Wischer: Essentially this covenant does three things, two things, however you want to look at it. It's an attempt to address the concerns raised by the County Commission last week. With respect to Vogel Road the commitment provides that at the time Vogel Road is built, whether it's because the property is parcelized or subdivided, the property owners abutting Vogel Road, as extended, will be responsible for the cost of putting in the road. It doesn't give a date or a time that Vogel Road is going to be built, because as we said last week, we don't know when that's going to be, it's going to be dictated by the timetable of development for the entire parcel. But, when coupled with the use and development commitment, at the time the property is developed, right-of-way will be dedicated, and the property owners, whether that be our client or whoever, it is going to run with the land, whoever owns the property is going to be responsible for the construction of the road. Same holds true with Columbia Street, that's paragraph two of the covenant, as such time as Columbia Street is built, those property owners abutting Columbia Street will be responsible for the cost of extending Columbia Street. Essentially, when it's built, my client or whoever comes after my client in the ownership of the property will pay for the construction of those roads. With regard to the traffic study, the covenant basically provides that at such time as the property is either subdivided or parcelized, either one, whether it comes to sub review or site review, a traffic study, if required by the County Engineer, will be conducted. Speaking with the County Engineer, and I had the opportunity to speak with him today, after he got back from vacation and was able to review the covenant, we don't know yet whether a traffic study is really going to be required. It depends on the use, it depends on the layout, it depends on the plat, what we're platting at the time. Obviously, the first lot we plat on Columbia Street, you know, it maybe will require a traffic study. If John Stoll believes it needs a traffic study, then we're going to have to do a traffic study. Now, when we plot lot number two right next to that lot, who's to, you know, we may or may not need an additional traffic study. So, you know, we've given a little bit of power here to John, you know, if he says we need one every time, then, by God, we're going to have to do it every time, but we're hopeful that

we can sit down with him during the site review process, sub review process and really determine what's needed, and once the traffic study is done we'll be armed with that information to determine what improvements need to be done with the property. So, I think that addresses the specific concern of Commissioner Fanello about a traffic study. I would also like to comment, you may note that one of the remonstrators from last week, Decem Investments, is not present tonight. Following last week's meeting I've had several conversations with Krista Lockyear, their counsel, who was here last week. I, you will recall that Decem's concerns related to use commitments and restrictions they would like to see on the property relating to things such as outside storage and building materials and other kinds of more aesthetic kind of concerns. Through our discussions, I assured Krista and her client that their concern, which primarily related to property values and preservation of property values, was shared by our client. Essentially, our client, the Hirsch family limited partnership, has approximately, you know, 190-200 acres left after this rezoning and this development. They certainly share the same concern that Decem Investments did in preserving property values for the remainder of their development, and in no way intend to do anything with their development that is going to damage property values for Decem Investments. Essentially, I assured Krista simply that our client intends to do it right, she conferred with her client and was satisfied and did not appear tonight. She asked me to make those comments on the record, and so I have done so. In a nutshell, that's where we are. We've done our best to address the concerns that were specifically raised by Commissioner Crouch with regard to construction of the road, and from Commissioner Fanello with regard to the traffic study. I believe we've done that. Certainly we've come a long way since we initially filed this with no commitment, and left the county in a better position, I think, for it. So, with that, we request your approval.

President Fanello: Are there any remonstrators here?

Les Shively: Madam President, members of the Board of Commissioners, my name is Les Shively, representing Regency Properties. Let me just, and I'm not going to rehash what we talked about last week, but let me remind you all, this is 50 acres for a carte blanche C-4 with no limitation on uses, something that's very rare in this community anymore, since we started utilizing the tool of use and development commitments. Fifty acres that will start opening up this entire section that has been undeveloped, starting to the east. Your County Highway Engineer, who you rely upon, and rightly so, in looking at traffic, infrastructure and needs for traffic, gave you a very lengthy memo. I'm not going to read it to you, but I'm going to hit the highlights. He goes;

"Finally it was noted that during the APC meeting that the use and development commitment only states that right-of-way will be

dedicated for Vogel Road and for Columbia Street. It does not mention construction of either of these roads.”

Final line in that memo, from Mr. Stoll is:

“I’m agreeable to this so long as all applicable infrastructure improvements are able to be required through the subdivision review/site review process.”

In other words, what Mr. Stoll, and he can speak for himself, if he’s still here, the point he’s making is, I’m fine so long as there’s something in the system that sees that these roads get built. Let me tell you what my client has already done, and this was also, I’m sure inadvertently misrepresented last week, but let’s clear the record, Columbia Street within Cross Pointe, part of which goes into Cross Pointe has already been dedicated to the county, and a letter of credit has already been posted. Here is the section (Inaudible).

Madelyn Grayson: Les, I’ll need one for the record also.

Les Shively: Madelyn, I didn’t forget you. We not only have dedicated it, which as Mr. Stoll says is half the equation, the other half is guarantee that it gets built. There’s a letter of credit. We’ve got to build it. We’ve got to build within a certain period of time, or that letter of credit goes to the county, the county will have the money to put it in. Regency doesn’t work that way, we will build it. That’s why we dedicated it, that’s why we posted the letter of credit. Wal-Mart has already posted their letter of credit for Columbia. Let me also make it clear that last week I heard Commissioner Fanello, as well as Commissioner Crouch say, we want to see a commitment for a traffic study. I didn’t hear you say, we want to see a commitment if some third party wants a traffic study. You wanted to see a commitment for a traffic study, and you wanted to see them work up some private agreements and disseminate it to the parties of interest. Now, I didn’t get my draft e-mailed until 9:00 this morning, and my office got it, and I was in trial in Warrick County. I called Mr. Wischer on Friday morning, reminding him of the fact that I had not received anything, and that I would like to have an opportunity to review it. He indicated to me that there would be no way that he would be able to get it to me today, that day, on Friday. The best he could do was sometime Monday. I explained to him again my dilemma. Apparently he stated here this evening that other parties received copies on Friday. Be that as it may, I’ve had an opportunity to review this, and this covenant commits the Hirsch’s to do nothing. It basically says as to Vogel and Columbia, when we build Columbia, we will build Columbia. It’s nonsense. It’s sarcuitous. What needs to happen, there needs to be a commitment that says we will build this road. There will be a commitment to build that road, that part of the road within the right-of-way that

we're dedicating that runs along our property. It doesn't say that. It says that;

"As such time as the extension of Columbia is actually constructed"

Constructed by whom? They ought to have a commitment to do the construction now. The traffic study, here's what it says, it says, basically, on number three that they are going to do a traffic study. It doesn't say that they are bound by the traffic study, they're just going to have a traffic, what the use is a traffic study if they are not going to be bound by the recommendations of that study. This private covenant does absolutely nothing. Now, you heard last week that time is of the essence for them. Do you know why time is of the essence? Because they had the audacity, after the Plan Commission failed to give them a do pass recommendation, they had the audacity, assuming you would just rubber stamp and give them approval, they had the audacity to go out after that meeting and sell a part of this property. Now, they say they've got to hurry up and close, and you've got to hurry up and make a commitment that this community is going to have to live with for years to come. They haven't done what they said they were going to do. I don't know about the Decem folks, my conversation with the Decem folks during my lunch break today was not that they were happy, that they were very unhappy, but that the Hirsch's were unwilling to go any further to address the issues that were of concern to them, and that's why they wouldn't be here this evening. I don't think they're just shot in the you know what with this particular project, but they understand that what you asked to be addressed in these new commitments did not go into the aesthetics, and I think that's why they're not here this evening. This agreement does not answer the question, and I know...still, as much as I feel they're giving everybody here the run around, and I feel very frustrated, and I feel very frustrated that your time is being wasted, I still don't want to see them being shot down on this rezoning. I just want to see it be done right. This is the time to do it. When this community commits to change from agricultural 50 acres to C-4 and set the wheels in motion for this development to run all the way to I-164, the time to do it is now. If it takes another week to get this thing right, let's get it right. But, it's not right, and it's just words on paper that are absolutely meaningless. We ask that you delay voting on this until we get it right.

President Fanello: Thank you, Mr. Shively. Chris, did you have anything that you wanted to add?

Chris Wischer: I can. I disagree. With all due respect to Mr. Shively, this commitment does do something that our prior covenant didn't do. It obligates, whoever those owners are when that road is built to pay for the construction of the road. It obligates them to do a traffic study, if the County Engineer wants one done. I've had discussions today with Danny Leek who's the engineer on this

property about the traffic study, and you all have dealt with traffic studies before, traffic studies are somewhat arbitrary in that they look at a proposed development with a lot of assumptions and fact to come up with recommendations about what that person doing the study thinks will be necessary. It's, I understand where Les is coming from, but I certainly am not going to advise my client to obligate him to do everything that a traffic study says. That traffic study is going to come back, and it's going to say, based on what we know about the use, these are the things that are recommended. Everybody, all the planning folks at the site review, sub review are going to have that information, our client is going to have that information. That will arm us to be able to sit down with the County Engineer and the other entities involved, and really look at what needs to be done. We hadn't committed to do that before, we've committed to do it now. I don't think that it needs to be done, quite possibly, every time we plat a lot. So, our thought, was we'll let the County Engineer say, when he has concerns about the proposed use, he can say when we do a traffic study. If he says we need to do a traffic study, we're going to have to do it. He may say it on every lot, then we'll have to do it. It's an expensive undertaking, but it's certainly worth it if it's important, if it's necessary for that development to ascertain what improvements need to be done. With regard to when the covenants were sent, I apologize to Les. You all will see on your e-mail it came from Tom Bodkin. I happened, I was in the office early on Friday, but I left and spent the day with my family, and had been told that it would probably be Monday, because John was gone, that we would send it, that it would be done, and the e-mail was sent, and I got in this morning and sent it to Les and to Krista. That gave them a day to review it, which isn't a lot more time than you all had, but with that being said, I apologize to Les for that. I don't think that should have any bearing on whether you act tonight. I don't think your time is being wasted. I think, I take umbrage at that comment. Put simply, let's just look from a practical standpoint, we've obligated that no access will be on Burkhardt Road, no access, except at three distinct locations. It's quite, my understanding, and John Stoll is here and he can speak to these issues, that Waterford and Florida will likely not be direct extensions of those streets, but simply entrance points, right turn lane only more likely than not. With this buyer that we have, and we're platting a small lot on the corner of Columbia and Burkhardt, we have no choice but to build Columbia. How else are they going to get to that property? It's simply a practical necessity that we build Columbia. And we're going to build it, it's in our contract that we have to build it. So, I want you to be assured that our client intends to do this right, we've done our best to give assurances where we could that we'll build those roads, and that's what we've done. Again, with that, we request your approval. I can answer any other questions.

President Fanello: John....does anybody have any questions for Chris? John, did you have anything that you wanted to add about the private covenant?

John Stoll: I can't really address what was said last week, since I wasn't here, but my understanding was that the traffic study was an issue. In that regard, like I said in the e-mail that I sent out, sometimes developers don't want to do those because of time and expense, and I've had one engineer for a developer say tell me what I need to build and we'll go build it, and get my project moving faster. Likewise, one's like Wal-Mart on the west side, for example, everything they did out there is the direct result of a traffic study. So, either way, as long as we can get the infrastructure improvements, I'm okay with it. Like Chris Wischer said, an individual lot may not warrant it, but as far as when the remainder of that property starts developing, if it's in groups of lots, or large, single developments, then it may warrant a traffic study at that point. Based on what's been done out there on previous developments, existing developments that are out there right now, I could give you a pretty good list of what I think is going to have to happen, and a lot of that was in that e-mail as well, as far as traffic signal modifications, turn lane extensions, road extensions, you name it. I think I could give a pretty good list of what would need to be done right now without a traffic study. However, a developer may dispute that and want to do a traffic study to say, no, I don't want to do those things. So, either way, a traffic study or not, as long as we can get the infrastructure improvements, I'm okay with this, and the original use and development commitment implied that the site review or sub review process would be the point where we could mandate the improvements. So, I didn't see anything that made it impossible for us to get the improvements. Like I told Mr. Wischer this morning, the original proposal did not have a use and development commitment, and when that was provided it was a step better. With this private covenant, I think it's a step better still. I don't know if there's any legal loopholes, I don't know if you saw anything like that, Kevin, that would prevent the county from being able to mandate the improvements, but short of that, I was okay with it.

Kevin Winternheimer: I guess, the bottom line is, John, the county will not build a road. So, if somebody wants to develop on a lot, somebody's going to have to pay for it, but it's not going to be the county. The county will not build a new road for these people.

John Stoll: Right. It will need to be built to handle the traffic generated by that development.

Commissioner Crouch: Bev, is Area Plan also satisfied with the changes that were made?

Bev Behme: On the private covenant? We actually (Inaudible, microphone not on) the Commissioners and John. We can the use and development commitment, but not this private covenant.

President Fanello: I am just going to ask Chris one question. I think Mr. Shively does bring up a good point, after I re-read that paragraph, can you explain the wording of that, "at such time as the extension of Vogel road is actually constructed", I'm not—

Chris Wischer: Well, I guess, when it's built, they'll pay for it, is what it says.

President Fanello: Okay, well, it almost assumes that there's someone else—

Chris Wischer: Well, here's, let me tell you, and this has been, we've been up front with John Stoll in our conversations with him about, you know, this could be a long time in developing. You know, the, it may be the Hirsch's that own the property, it may be somebody else that's developing the property, and what that paragraph does is say that when the road is built, those property owners along Vogel Road or Columbia Street will be responsible for building that road.

President Fanello: But, it almost makes it sound like the road's constructed before their responsible for building the road.

Chris Wischer: Well, they're responsible for the cost. They're certainly not going to pay for it, they're responsible, I can see what you're saying. I think it's—

President Fanello: It's a little confusing.

Chris Wischer: I think it's a matter of semantics, and I think the key point is that the county is not responsible for the cost of the road. As Mr. Winternheimer says, the county is not going to build it. Whoever develops it is going to have to build it. Again, practically, it's got to be built. There's really not going to be anyway around it.

President Fanello: Kevin, do you have any...is it—

Kevin Winternheimer: I mean, I don't have anything to add other than that point, that when it's to be built, it's not going to be the county, it's going to be the people who are trying to develop behind, I guess behind would be the term, behind your client there, if it's not, in fact, your client. They are going to have to put that road in.

Chris Wischer: Right.

Kevin Winternheimer: Otherwise, they're going to have a piece of dirt there and that's it.

Chris Wischer: To go through the process, the use and development commitment says when we develop it, sub review/site review will dedicate the right-of-way. This goes a step forward, and it just says, at such time as the extension is contemplated by the dedication of the right-of-way, which is in the use and development commitment, at such time as that right-of-way is dedicated, as such time as the road within that right-of-way is constructed, it's going to be those property owners responsibilities to pay for it. That's what it says.

President Fanello: I think you could read it a couple of different ways.

Kevin Winterheimer: But, it's your intent, and you're drafting this, that either your client or your client's purchasers will pay for that road, is that right?

Chris Wischer: Absolutely. I don't know that I have a, what do you call it, a provision that says that the writing is the writing and that's all it is, is not in there, so in extent these representations could be incorporated into that bargain, or that covenant, you know, in the future if that needs to be implied, so be it. But, absolutely, our client, or successors, will pay for any construction of any road that we've set forth in here, Columbia or Vogel.

Commissioner Crouch: And you'll do so when the County Engineer deems, or site review or sub review deem that it's necessary?

Chris Wischer: To build it?

Commissioner Crouch: Uh-huh.

Chris Wischer: Certainly at the time it's developed it's going to have to be built. So, at the time, you know, I can't put a...development, I can't put a timetable on at what point, when we start breaking ground, then so many days after that we've got to build the road. I mean, we haven't thought, we don't know when that's going to be built. So, we've not put those timetables in there, but that's the intent.

Commissioner Crouch: Can we enforce intent?

Kevin Winterheimer: I'm sorry?

Commissioner Crouch: Can we enforce intent?

Kevin Winterheimer: Sure. I just want to clarify, in case it's on the record and this record is kept forever, so, when neither I nor you nor he are sitting here—

Chris Wischer: That's right.

Kevin Winternheimer: –at the time when this comes up to be built, they are on the record for what they intended that to mean.

Chris Wischer: That's right. Absolutely, it's our clients, and/or it's successors, as property owners along that extension responsibility to pay for that road.

President Fanello: Is there anyone else in the audience wishing to address the board?

Commissioner Crouch: I was going to ask your opinion.

Bill Jeffers: I'm not sure I'm going to express my opinion. I just have a question. I would like to play the devil's advocate and point out a situation, having been on the site review committee for several years, and the subdivision review committee for several years and seen how it's played out, and wiggled, and so forth, and how various applicants come up with their legal and engineering consultants and say, the code doesn't require us to do this. Area Plan Commission is saying, we don't enforce private covenants, and so forth. So, I'm just going to ask for someone's opinion on one example. What happens, as Mr. Wischer points out when the property is developed along one of these extensions of one of these roads that's not built yet, and the right-of-way is dedicated, but the clients on the north half of that right-of-way, on the north side of that right-of-ways says I only have to build half the road. Now, this has already happened. When Wal-Mart dedicated their half of Columbia Street, correct, Bev?

Bev Behme: That's right.

Bill Jeffers: They put up a letter of credit for their half of Columbia Street, but they wouldn't build it, because the other half lay on the Hirsch's property, and the Hirsch's wouldn't put up a letter of credit for the other half. So, that letter of credit languishes there as the price of construction, you saw the prices of asphalt go up year by year, earlier in the meeting, the prices of concrete do the same. The price of the labor does the same. So, when Wal-Mart goes to build, or when someone goes to build Columbia Street with the Wal-Mart letter of credit, I don't know just how far they are going to build it. But, my question is what happens when a buyer of a parcel of the Hirsch's property says, okay, here's my plan, but I only want to build half the street, because that's the half that serves me. The other half hasn't been sold yet, it still remains a part of the Hirsch's property. Who builds the other half of the street? It's not just the street, it's what lies under the street in the form of drainage infrastructures. I only want to put in my side of the drainage curb inlets and pipes. I don't want to have to make the connection to the rest of the system, because that's on somebody else's half of the right-of-way.

President Fanello: Thank you, Bill. Is there anyone else in the audience wishing to address the board?

John Stoll: I was going to say in regard to what Bill's talking about, he's exactly right, that is what's happened out there on Sam's Club. To carry that further, the lot behind Sam's, immediately east of Sam's, was parcelized rather than being included as part of the subdivision, because the subdivision, basically, expired. So, that was the reason why I was looking for a trigger in the use and development commitment that allowed the site review process to mandate infrastructure improvements. Which, my concern was, this same parcel of ground could be parcelized just like that was, then we would lose all leverage to try to get any kind of improvements. So, I think the use and development commitment at least addressed that. In regard to the streets being built half at a time, if that same situation occurs on this one, I guess, the only leverage I could say that I would have would be I wouldn't sign the permit until a plan was presented to build the entire road. Whether or not that would be enforceable, and if it went all the way to court, remains to be seen, but that would be the leverage if somebody on the south side of Vogel came in and said I want to come in and develop this lot, and the person who owns the north side was not willing to participate, then I wouldn't sign their site review permit. Obviously, I wouldn't be able to bring a set of street plans in here. Short of that, I don't know what other mechanism we would have in place that would prevent the same problem we've got with Sam's from occurring again.

President Fanello: Thank you, John.

Commissioner Crouch: So, John, what you're saying is there's nothing we can do that could prevent that from happening. Is that what you're saying?

John Stoll: Going back on the wording of the private covenant, I don't know if that would give us the grounds to force both parties to participate, because the way the wording is in the covenant, to me it indicated that they would have to come to the table and build the road, because it says abutting and adjoining. If that was sufficient to force them, there again, I don't know how you'd force them to ante up and pay their share of it though.

Kevin Winternheimer: Well, you can always go to court to enforce the agreement, is the bottom line. I'm not familiar, totally familiar with the Wal-Mart situation, but it sounds like there are some different, factual differences, between that situation and this. In this situation, is the dedicated right-of-way all on their property?

John Stoll: Right, in this case.

Kevin Winternheimer: It sounds like Wal-Mart was a little bit different. It sounds like half was on one parcel, and half on another.

John Stoll: Correct.

Kevin Winternheimer: Therein was the dispute. Where I think that could be an important difference between that situation and this situation. But, yeah, we have a lot of leverage on the permit process to enforce this. The bottom line is we're not building the road, period. They are going to have to come to you and the Commissioners for various permits to get it done. We could stop them there. If that doesn't get the job done, then we could always resort to court for it.

John Stoll: And there may be some other loophole that I haven't thought of, or Bill, or anybody else on some way that somebody could find a way to go around the process and not build those roads. I couldn't think of it off the top of my head, but it could be out there. Like Bill said, we've seen many variations on how these things occur. In reviewing both the use and development commitment and the private covenant, I was looking at it from the perspective of trying to cover the county, but, likewise, work with the developer and their attorneys to give them the flexibility to develop the ground as they see fit. Usually, what the developers want and what the county wants, don't necessarily coincide. So, that's where it got to be a problem on trying to get it specific enough to cover the county's interests. Likewise, to give them their flexibility in how they want to develop their property.

President Fanello: Thank you, John.

Bill Jeffers: Very briefly, one more scenario. In other subdivisions where the developer builds the entire road and drainage infrastructure and then sells the individual lots. In this case, what if he sells a lot or two beyond what's been built? Then that developer of that lot comes in and says, well, the road hasn't been extended to the lot that I bought, and I'm ready to build, but the people that way from me haven't built the road yet, but the county entered into an agreement that prohibits my access. You know, inhibits my ability to access my lot. So, I want somebody to build that road. Somebody is responsible for giving me access to that parcel I bought so I can go ahead and develop now.

Kevin Winternheimer: This should be in his chain of title. I assume the legal description covers the entire parcel.

Chris Wischer: Right.

Kevin Winternheimer: So, when they bought that, he's on notice that the, as a sub-purchaser, he's responsible for it, that the county is not going to build him a

road. That's not what we do.

Chris Wischer: Just to expand on that. The access limitation is in the use and development commitment, not the private covenant. Either way, whether it's in one document or the other, it's going to be in the chain of title, just as Mr. Winternheimer said. Any person who buys is obviously subject to those things that are in their chain of title, those restrictions. They're going to be on notice of that access restriction, and I think they would be hard pressed to claim that they didn't have reason to know about that access restriction. I would also like to, just one point I think I would like to clarify, when we were here last week, let me back up, the most likely scenario for this property is that it's subdivided. Through that subdivision process, certainly there are, letters of credit have to be posted, the roads will have to be built, they are all going to be internal, our client owns the entire property. Okay? What we tried to do was to assist the planners in the event that somebody would buy a larger portion and parcelize, which there was no protection. There's no protection in the ordinance for a parcelization. Even in the case of a parcelization, which would not be otherwise required by your ordinance, there will be right-of-way dedicated, and the party abutting the road will be responsible for its cost. There are always going to be scenarios we could think of that would come up that may put this to the test, but the more likely case is that we subdivide it. The reason we put these covenants in here was to give the extra protection, that even in the case of a parcelization and site review, the traffic study is going to be done, which otherwise wouldn't have happened, and that it's clear who's responsible for paying for the road. Because Mr. Winternheimer has said the county is not going to build it, somebody is going to have to build it. They are going to have to come to the table, or they have no road.

President Fanello: Thank you, Chris. If there are no more questions or comments—

Les Shively: One more comment.

President Fanello: Okay.

Les Shively: You know, I went to law school to learn how to draft documents so that they are clear and unambiguous and lay people know what their rights are. Not to create ambiguities that can later ripen into law suits. Why not get it right the first time? Why do we have to have all this nuance on the record about what the intent is, what...say it in good old English what the commitment is so it's in the...right now it says we will build it when we build it. That's no commitment. Let's get it right. All this nonsense about these minutes, you know, these are outside the four corners of the instrument. Yes, maybe they can be used in court cases, but why create a situation that is going to invite interpretation five, ten,

twenty years from now? Let's get it right the first time. Again, I don't want to see this rezoning defeated, I just want to see this document be placed of record to do what it was represented to do. Very simple.

President Fanello: Thank you, Mr. Shively. Chair would entertain a motion.

Commissioner Mosby: I will make a motion to accept VC-04-2004 with use and development and private covenant, and call the roll.

Commissioner Crouch: No.

President Fanello: I need for you to second it to get it on the floor, and then I'll roll call vote.

Commissioner Crouch: Second.

President Fanello: Okay. Roll call vote. Commissioner Crouch?

Commissioner Crouch: No.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Yes.

President Fanello: Are you sure you don't want to go back and do some rewording?

Chris Wischer: Obviously, if the Commission were to require some rewording, then we would take that time, and avoid a denial, then, certainly, we would have to do that. Otherwise, obviously, we would be barred for a year from bringing it back.

President Fanello: Well, and that's what I...Commissioner Crouch, if they came back with rewording on the construction of the road are you concerned with that?

Commissioner Crouch: Yes. I think the Surveyor raised a couple of good points. You know, we ought to look to avoid law suits, not invite them.

President Fanello: I don't want to have, for you to have to wait for a year, but if I go further, you're going to have to wait for a year.

Chris Wischer: Okay, well, that's fine. Absolutely.

President Fanello: I don't know, can I stop the—

Kevin Winternheimer: Well, they can rescind their motion and second, and have a new motion to hold it again. We're not in the 90 day window, or whatever?

Bev Behme: No, we're okay.

Kevin Winternheimer: We're okay on that?

Bev Behme: The Plan Commission voted July 7th, so we have plenty of time.

Kevin Winternheimer: Okay, we're good. We have time.

President Fanello: Because I don't think anybody's intention here is for you to be defeated for a year. I would hate to see that happen.

Chris Wischer: We don't want to be defeated.

President Fanello: Would—

Kevin Winternheimer: I forgot who made the motion.

President Fanello: Mr. Mosby made the motion to get it on the floor. Would you entertain rescinding that motion?

Commissioner Mosby: Sure.

Commissioner Crouch: Second.

President Fanello: So ordered. Why don't you tighten up the language on the construction of the road, and we'll put it back on for next week.

Chris Wischer: Okay.

Kevin Winternheimer: For the record, anyone who's interested here, we'll be back next week—

Chris Wischer: Next week.

Kevin Winternheimer: —at the regular Commission meeting.

Chris Wischer: Okay.

Kevin Winternheimer: So, we don't have to readvertise.

Chris Wischer: Just to clarify, so that I understand, we're talking about construction of the road.

President Fanello: We're talking about construction of the road.

Chris Wischer: Making sure that it gets built.

President Fanello: Yes.

Les Shively: I will assure the Commission, if we get that language agreed to, I won't be here next Monday evening, because we will have something that we've already signed off on (Inaudible).

President Fanello: Well, I think there's some good points raised here tonight. I really do, and, but I don't want to see you defeated for a year.

Chris Wischer: No. Again—

President Fanello: I don't think that's necessary.

Chris Wischer: It's always been our client's intention to develop this property right, and if we need to take a week, put some harder language in there to assure you that that's, you know, give you comfort that is our intent, then we'll do so.

President Fanello: Okay. Thank you, Mr. Wischer.

Chris Wischer: Thank you.

(The rezoning portion of the meeting was recessed at 7:32 p.m.)

President Fanello: Do I have a motion to adjourn the Commissioners meeting?

Commissioner Mosby: So moved.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The Commission meeting was adjourned at 7:33 p.m.)

CONSENT ITEMS:

Jail Expenses:

United Consulting Engineers: \$20,832.79
Vectren Energy Delivery: \$17.59
Williams Brothers Construction: \$1,153,030.48
Great Lakes Hotel Supply: \$16,975.80
Peyronnin Construction Company: \$116,329.05
Mel-Kay Electric Company, Inc.: \$32,400
integrator.com: \$3,800

Travel Requests:

Health Department (1) SWCD (1)

Employment Changes:

Knight Township Assessor (1) Circuit Court (2) Burdette Park (2)
Voters Registration (1)

Requests for Telephone Service:

Weights & Measures (1) Circuit Court (1)

Treasurer: Submit Monthly Report for June 2004.

Auditor: Submit Financial Statement.

County Clerk: Submit Monthly Report for May 2004.

EMA: Indiana Citizen Corp Council Grant Agreement

Sheriff: Submit Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Madelyn Grayson	Phil Lawrence	Brad Ellsworth
Troy Tornatta	Royce Sutton	Bill Lockard
John Stoll	Dennis Hudnall	Gary Hohman
Chris Wischer	Les Shively	Bill Jeffers
Bev Behme	Others Unidentified	Members of Media

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY
REZONING BOARD
AUGUST 2, 2004**

The Vanderburgh County Rezoning Board met in session this 2nd day of August, 2004 at 6:24 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The continuation of rezoning petitions from July 26, 2004 were resumed during the course of the regularly scheduled Commission meeting.

**Final Reading: VC-4-2004
Petitioner: Hirsch Family Limited Partnership
Address: 1501 North Burkhardt Road
Request: Ag to C-4 with UDC and Private Covenant
Action: Approved 3-0**

President Fanello: We'll move on to our continued rezoning, VC-4-2004.

Chris Wischer: Good evening, Chris Wischer, Bamberger, Foreman, Oswald and Hahn here on behalf of the petitioner, the Hirsch family limited partnership. David Hirsch, of the Hirsch family limited partnership is here with me tonight. You will recall that last week we were here, we continued the meeting for us to do some more work on our private covenant, which we have done. We've circulated that this morning. I sent a copy to the County Attorney, to each Commissioner, to the County Engineer, to the two remonstrators who've appeared, to their counsel, Les Shively and Krista Lockyear. I believe that we've reached, we've come to you with a covenant tonight that everyone is happy with, or at least can live with. I want to go through with you briefly what's different about this covenant than what was before you previously. I have additional copies, if anybody needs a copy.

President Fanello: Can you go ahead...I don't have mine in front of me. I didn't bring it. Thank you.

Chris Wischer: I would like to say too, the language with regard to the road construction, both Vogel Road and Columbia, which are paragraphs one and two, do contain some language that does incorporate, to some extent, some language by Mr. Shively, and I think he'll speak after I'm finished and tell you that his client is happy with the way that this covenant is now. The main difference, I think, that you'll find is we've added language to the covenant that requires, in addition to the dedication of the right-of-way, that it does provide that the property owners along the extension will build, will construct or cause to be constructed the road,

as opposed to simply saying they will pay for it. In addition, we had put in that the road will be constructed to county standards, such that it would be accepted for maintenance by Vanderburgh County. I think the most important line that was added is the final sentence of each paragraph, which essentially provides that no lot or parcel along those extensions or that requires those extensions for access to the property will be put to commercial use until such time as the road is built. That answers the question about when is the road going to be built. Essentially, the client can't use the property, at least the portions there that would be serviced by those roads until such time as they are built. So, it requires, ultimately, that they be built. Traffic study, one addition there, we still have it that a traffic study would be required if deemed necessary by the County Engineer. In addition, any recommendations in the traffic study will be implemented to the extent reasonably required by the County Engineer. So, essentially, I think that will assure that if the traffic study does put forth reasonable recommendations, and your County Engineer says that they need to be done, we're going to be in a position where they have to be done. That's, in a nutshell, the difference in the covenant. We've really, I believe, worked hard to come up with a covenant that will satisfy the county's concerns as well as the concerns of Mr. Shively's client in particular. I would like to say too, on the record, that I did speak with Krista Lockyear, their position has not changed since last meeting. With that, we request your approval.

President Fanello: Thank you, Chris. Mr. Shively, would you—

Les Shively: Just briefly, on behalf of Regency, you know, you don't always get everything you ask for, but this is pretty darn close. This is consistent with the spirit that we think needs to happen out there. We really applaud the Hirsch family for being patient and allowing this to happen. We thank you all for giving us the time to do that. We ask, we wish the best of luck to the Hirsch family and their development, because everybody wins out there when things move forward and they're done correctly. I just wanted to add that I think procedurally, whatever motion you make this evening, not to be presumptuous, but assuming that it is a motion to adopt, that it be subject to the use and development commission, commitment, as it came out of the Plan Commission, and also subject to the private covenant. I would make sure that the record reflects that.

President Fanello: Are there any other, or, I shouldn't say any other. Are there any remonstrators in the audience? Okay, seeing none.

Commissioner Mosby: I will make a motion to adopt VC-4-2004 with use and development commitment and private covenant signed by this body.

Commissioner Crouch: Second.

President Fanello: So ordered. Roll call vote. Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Yes.

President Fanello: And I vote yes. Rezoning passes.

Madelyn Grayson: Commissioner Fanello?

President Fanello: Yes.

Madelyn Grayson: Is it the Commission's desire that I record the private covenant in conjunction with the ordinance? Because I don't have enough recording money.

Les Shively: Mr. Wischer and I were discussing that, and (Inaudible) Mr. Winternheimer that there's a time period that pertains to the (Inaudible) expires (Inaudible). So, that being 30 days from today. So, you can go ahead with the ordinance, but the covenant—

Kevin Winternheimer: Well, there were no remonstrators.

Les Shively: Well, I understand that.

Kevin Winternheimer: We can talk, I'll let you know.

Les Shively: We'll work on it.

Chris Wischer: We'll work with the County Attorney on—

President Fanello: Do you have a final copy of this?

Chris Wischer: For the record, our pledge is...it is executed, I have the executed copy.

Madelyn Grayson: I don't have a copy of that. I've got a copy that doesn't have any signatures on it.

Chris Wischer: I've got a signed copy. It needs to be notarized.

President Fanello: Okay.

Chris Wischer: We plan on recording it. We thought 30 days, we'll talk to the County Attorney about that, but you have our representation that it will be recorded.

Les Shively: I will make sure it's recorded.

President Fanello: You know, I have no doubt about that. Do I have a motion to adjourn?

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:33 p.m.)

CONSENT ITEMS:

Travel Requests: SWCD (1)

Employment Changes:

Sheriff Department (6)

Burdette Park (3)

Co-Op Extension (1)

Superior Court (1)

VCCC (1)

Commissioners: Jobe's Lane Semi-Annual Report.

Superior Court: Juvenile Accountability Block Grant Agreement.

Sheriff: Submit Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello

Bill Fluty

Madelyn Grayson

J.D. Strouth

David W. Mosby

Kevin Winternheimer

Phil Lawrence

David Kent

Suzanne M. Crouch

Tammy McKinney

Sue Hartig

David Guerrettaz

Bill Nix
Steve Craig
Bev Behme

John Stoll
Chris Wischer
Others Unidentified

Reggie Haskins
Les Shively
Members of Media

**VANDERBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY
REZONING BOARD
AUGUST 16, 2004**

The Vanderburgh County Rezoning Board met in session this 16th day of August, 2004 at 6:58 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regular Commission meeting.

President Fanello: Rezoning.

**First Readings: VC-8-2004
Petitioner: Cross Pointe Commerce Corp.
Address: 7100 E. Virginia
Request: Change from Ag to C-4**

President Fanello: Where's Bev?

Commissioner Mosby: I don't know.

President Fanello: I know, nobody likes to stay for rezonings.

Unidentified: I'll stay for it.

President Fanello: We have one first reading, VC-8-2004, Cross Pointe Commerce Corporation from Ag to C-4.

Commissioner Mosby: Motion to accept.

Commissioner Crouch: Second.

President Fanello: So ordered.

**Final Readings: VC-7-2004
Petitioner: Arbors at Eastland L.P.
Address: 6649 Old Boonville Hwy.
Request: Change from Ag to R-3
Action: Approved 3-0**

President Fanello: We have one final reading, VC-7-2004, Arbors at Eastland, change from Ag to R-3. Is there anyone here to speak to that?

Jeff Boss: Jeff Boss with Sterling Development, Mishawaka. We purchased, originally purchased an easement to access a property that didn't have any road frontage off of Old Boonville Highway. We ran into some snags on being able to set a directional sign and informational sign on Old Boonville Highway directing people to our property. We understand that it has to be, the property has to be contiguous and owned by the same owner. We have recently acquired the easement in our name now, and rezoning that Ag to meet the same zoning as in the Arbors, which is multi family for the purpose of setting a sign on site, an informational, directional sign. It was all in the original plans and we just missed the fact that it was considered an off-site sign, which is not an acceptable method.

Commissioner Crouch: And that was unanimously approved, wasn't it?

Commissioner Mosby: Any remonstrators?

President Fanello: Are there any remonstrators out there?

Commissioner Mosby: Motion to adopt and call the roll.

Commissioner Crouch: Second.

President Fanello: So ordered. Roll call vote, Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Aye.

President Fanello: And I vote yes. Rezoning passes.

Madelyn Grayson: Mr. Boss, I just had a couple...the ordinance does not have a two inch margin at the top, so I'm one dollar short on the recording fee. And I also need the ordinance e-mailed to me for advertising in the paper. I've got a business card here if you want to--

Jeff Boss: Can I give you the dollar now?

Madelyn Grayson: That would be great.

President Fanello: Do I have a, if there's no other business--

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 7:02 p.m.)

CONSENT ITEMS:

Jail Expenses: United Consulting: \$17,132.96

Travel Requests:

Health Department (3) SWCD (1)

Employment Changes:

Circuit Court (1)	Coroner (1)	Superior Court (2)
Burdette Park (1)	VCCC (1)	Health Department (1)

Commissioners: Form 144's (Pass through item: See 7/19/04 Mtg. File)

Sheriff:

Operation Pull Over Grant Application.

Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Madelyn Grayson	Phil Lawrence	Kathy Kennedy
Patty White	Dave Rector	John Stoll
Dennis Hudnall	Steve Craig	Les Smith
Jeff Boss	Bev Behme	Others Unidentified
Members of Media		

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded by Madelyn Grayson. Transcribed by Charlene Timmons and Madelyn Grayson.

**VANDERBURGH COUNTY
REZONING BOARD
SEPTEMBER 20, 2004**

The Vanderburgh County Rezoning Board met in session this 20th day of September, 2004 at 6:14 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regularly scheduled Commission meeting.

President Fanello: Rezoning, we need to move into our rezoning meeting, which we only have one first reading.

**First Reading: VC-9-2004
Petitioner: Red Bank Development LLC
Address: 545 S. Boehne Camp Road
Request: Change from Ag to C-4**

President Fanello: VC-9-2004, from A to C-4. Do I have a motion to accept on first reading?

Commissioner Mosby: Motion to accept VC-9-2004 on first reading.

Commissioner Crouch: Second.

President Fanello: So ordered. Before we adjourn, in order to help you with your audit, I do have everything on a CD Rom, all of the expenditures, so I will just burn you a copy, and that way you can look over it. Do I have a motion to adjourn?

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:15 p.m.)

CONSENT ITEMS:

Jail Expenses:

Peyronnin Construction: \$193,218.30

Integrator.com : \$54,000

Travel Requests:

Health Department (4)

Knight Assessor (1)

County Clerk (1)

Requests for Telephone Service:

Public Defender (1)

Sheriff (1)

Employment Changes:

Cumulative Bridge (1)

Superior Court (1)

Co-Op Ext. (1)

Health Department (3)

County Clerk (1)

Treasurer:

Surplus of Software.

Submit Monthly Report for August 2004.

Health Department: Submit surplus letter for computers and other items.

Superior Court: Submit surplus letter for copy and fax machines.

Sheriff:

Submit Weekly Jail and Community Corrections Reports.

Interlocal Agreement with White County, Illinois for Transfer of Inmates.

Those in Attendance:

Catherine Fanello
Bill Fluty
Madelyn Grayson
Gary Hohman

David W. Mosby
Kevin Winternheimer
John Stoll
Others Unidentified

Suzanne M. Crouch
Tammy McKinney
Chris Walsh
Members of Media

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY
REZONING BOARD
OCTOBER 18, 2004**

The Vanderburgh County Rezoning Board met in session this 18th day of October, 2004 at 6:27 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regular Commission meeting.

First Readings

President Fanello: We will now hear our rezoning agenda. We do not have any first readings.

Final Readings:

**VC-17-2003: Petitioner: Peter M. McCullough
Address: 2751 Allens Lane
Request: Ag to R-3
Action: Approved 3-0**

**VC-8-2004: Petitioner: Cross Pointe Commerce Corp.
Address: 7100 E. Virginia
Request: Ag to C-4
Action: Approved 3-0**

President Fanello: We have two final readings, the first one being VC-17-2003, 2751 Allens Lane, change from A to R-3.

Tom Bodkin: Good evening ladies and gentlemen, Tom Bodkin, 20 Northwest Fourth Street, counsel for the petitioner. This particular parcel of issue lies between St. Joe Avenue and Mesker Park on Allens Lane. You may recall about a year ago or so we were here rezoning a piece of ground just across the road from this, we went for a down zone there from C-4 to C-2. This is a zoning from Ag to R-3. It's a very exciting condominium development for the northwest side of Evansville. To my right, your left is a schematic showing you what's going to be there. This is what they'll look like, to your right, and my left. The petitioner, Pete McCullough, his mom and dad and the Fehrenbacher family are the folks who are at work. Let me give you a bit of background about the units. This is going to be a condominium project. We met extensively with the staff of the Plan Commission to determine exactly what zoning category we needed for the condominium, and R-3 is that category. That's why we've asked for an R-3. The

units, I can tell you that the interior will not be public roadway, it will be private, so you won't have any maintenance responsibilities for those roads. There will be two entrances to the area. One, I'll walk over here and point to it for you and then I'll come back. Those two entrances to the entire development. The major entrance matches up with the entrance right across the road with regard to the units we built, which are apartment type units, right across the road last year, that are under construction now. We've met with Bill Jeffers on numerous occasions to work out where the storm water needs to go, and I can tell you two things of interest there. Number one, the water will be taken under Allens Lane, through piping, and put into the little creek downstream of the bridge. That's significant because that leaves the upstream area free for further development in the future. Secondly, Pete's working with the Surveyor to deal with quality issues, because we're acutely aware of your MS4 issues out there, and we are working with Bill to make sure we address those, as well as quantity issues. We've talked with your County Engineer, and with EUTS with regard to the roadway issues that need to be dealt with. There will be, as you can see, passing blister is the wrong word, excel/decel to get in and out. Those really get dealt with at site review, but we're showing you where they're going to be. These again are condominiums. It's very exciting, because we don't have a lot of those on the west side. The Plan Commission met on this matter a week ago, well, last Wednesday, a week ago almost. I believe the vote of the Plan Commission was to recommend it. That vote, save one abstention, correctly so, was unanimous. It's an exciting opportunity for us. It's an exciting opportunity for this area of the county. To our west, basically, is one owner who has no objection to this rezoning. To our south, where it says Leisure Living Condominiums, is property owned by Deig Brothers. There is, in fact, a big borrow pit there, as I recall, and some equipment sitting around. They have no objection. There's some folks who live to our north who have no objection. And, I can tell you the Westside Improvement Association also, not only has no objection, they are here, they'll talk, I hope, but are also in support of this project. There are no remonstrators. It is a good opportunity for us to move forward with residential development in this part of the county. Pete McCullough is here. If you have any questions in detail, he would be happy to answer them, as would I to the extent that I have that knowledge.

President Fanello: Are there any questions for Mr. Bodkin? Are there any remonstrators in the audience? I have to ask that question.

Fred Padget: In this case we are not going to remonstrate. I'm Fred Padget, and I represent the Westside Improvement Association. I did want to come down tonight because so many times we come in and ask for help or assistance, or we come in and have a problem, or we come in and we're against something. I just wanted to come down and let you know that we're not always against things. Here's a project that we do fully support, and we think it will be a great asset to

the west side. The developer, Mr. McCullough, he invited me to meet with him and review the plans way up front, which is exactly the way that we think it should work. We appreciate that, and we thank Pete for the invitation to do that. We reviewed the plans in quite detail, I guess, we spent, I guess, an hour and a half or so, took a walk around some of the other property and seen some other things he's doing. But, this concept of the free standing residences operated similar to a condominium, I think, is a great thing for the west side. There is little maintenance involved with it. I think that will be attractive to a lot of people that would like to live in that kind of a setting. I guess, it's unusual to use the word innovative and retro in the same sentence, but this design plan, to me, is kind of innovative, but at the same time, it's retro. One of the things that I liked about it was that it kind of goes back to the old concept of a lot of neighborhoods in cities where there's an alleyway with the garages facing the alleyway. So, that the front of the house is the only thing that you see from the main street. You don't see the garage. They're around behind. I think that's quite innovative today, and at the same time it is retro. The drainage and traffic plans we went over those, but we'll leave that to the technical people. Basically, it's a good project. Many westsiders, I think, want something like this. I've had several people talk to me about they would like to stay on the west side, as they get older they don't want the maintenance of a home, this kind of answers that question. We believe there's a need for it, not only on the west side, but in Vanderburgh County. So, we think it's a good project. We fully support it. Best of all, I guess, is that we have a developer here that is, one of the developers that tells us what he's going to do, and then he goes and does it, and he's responsive to us in the meantime. Thank you. If you have any questions, I'll gladly answer them.

President Fanello: Thank you, Fred. Is there anyone else here wishing to speak to this rezoning? If not, do I have a motion to approve?

Commissioner Mosby: Motion to adopt VC-17-2003, and call the roll.

Commissioner Crouch: Second.

President Fanello: Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Aye.

President Fanello: And I vote yes.

Tom Bodkin: Thank you ladies and gentlemen.

VC-8-2004

President Fanello: Next rezoning we have is VC-8-2004.

Jim McKinney: Good evening, Commissioners. My name is Jim McKinney, I'm president of Cross Pointe Commerce Corp. here to request a rezoning from agriculture to C-4, what we know as Lot E4. This is a piece of property, a part of Cross Pointe, which is on Virginia Street adjacent to the rest of Cross Pointe. Unfortunately through our process of rezoning, we had failed to get this one parcel rezoned C-4 with the rest of the development. It went before Area Plan Commission. I understand it was unanimous except for one vote, and that was only with regards to the fact that a private covenant was being requested, under which this parcel of ground would be in agreement by the owner to complete Columbia Street, when Columbia Street would be built to this parcel of ground. Which we are in agreement to. A few weeks back there was a comparable request with regards to the private covenant for a lot at the corner of Burkhardt and Columbia, and the private covenant has been drafted, has been provided to your attorney, it was show to John Stoll, both of whom I understand have approved it. It parallels exactly the agreement they had reached before, and I wish to offer this.

President Fanello: Are there any questions for Mr. McKinney? And everyone has seen the private covenant.

Commissioner Mosby: I guess, you've seen this.

Kevin Winternheimer: Just for the record, they, on the covenant, they've agreed to dedicate and build their half of the street when the other half is dedicated and built, or to be built. That was John Stoll's request. He did not want half a street built too early. So, that was the change in the final covenant, and they put that in the agreement.

Jim McKinney: Do you want me to present the covenant to you.

President Fanello: I have a copy of one. Do we need, do you have one, Madelyn?

Kevin Winternheimer: We'll have to give it to Madelyn.

President Fanello: Okay, yes, we will need that one. Thank you.

Commissioner Mosby: With that being said, I'll make a motion to adopt VC-8-2004, and call the roll.

Kevin Winternheimer: Just before you call the roll, let's note that there is no audience, so we have no remonstrators, except for the media, and he's not saying anything.

Commissioner Mosby: John, do you want to remonstrate?

President Fanello: Thank you, Kevin.

Commissioner Crouch: I'll second. Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Aye.

President Fanello: And I vote yes. Rezoning passes.

Jim McKinney: Thank you very much.

President Fanello: Thank you, Mr. McKinney.

Commissioner Mosby: Thank you.

President Fanello: Before we adjourn, I had, do we have any minutes to approve from the last rezoning?

Madelyn Grayson: We approved those at the Commission meeting following the last rezoning meeting.

President Fanello: Right. I did forget one item under consent items that someone had asked me to bring up. In regards to the voter outreach program that's going on right now, I noticed that we signed a contract tonight for demonstrations at Eastland Mall. I think the Election Board a couple of weeks ago voted, which I think was a good vote, to have the voter outreach performed in a bipartisan manner. But, I've had a complaint from the person who has been hired as the Democrat appointee, that they are not getting paid the same as the Republican appointee. So, I don't know, they asked me to bring that to the attention of this board. I believe ES&S is signing contracts with these individuals. So, I don't know what we can do about that. But, I don't think it's fair that somebody get paid \$25, and another person get paid \$15, if it's supposed to be a fair and bipartisan effort.

Commissioner Crouch: This is the first that I've heard of it. So, I don't know how to respond to that. I guess, we could ask Kevin to look into it and see if there's...I mean, is there any—

Kevin Winternheimer: Well, I was going to suggest Tammy.

Commissioner Crouch: Well, moving right along.

Kevin Winternheimer: I mean, they may have a reason. I think the appropriate thing to ask them is why they are differential, and see if they have a reason. I have no idea.

President Fanello: Can you check? I think it would be appropriate for you to check on that. Can you have a conversation with the appropriate people in the Election Office, and probably the person at ES&S would be Tom O'Brien, and Patty has his number.

Kevin Winternheimer: Okay.

President Fanello: But, if you could have those conversations and let me know, let us know in the next few days what you find out.

Kevin Winternheimer: I will.

Madelyn Grayson: Do you want me to pull that document?

President Fanello: No, I think the contract is fine, but that made me remember that somebody had brought that to my attention the other day. Do I have a motion to adjourn, if there is no further business?

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:37 p.m.)

CONSENT ITEMS:

Jail Expenses:

Williams Brothers Construction, Inc.: \$740,777.27

Peyronnin Construction Company: \$238,252.86

Mel-Kay Electric Company, Inc.: \$ 184,950.00
Integrator.com: \$15,750.00

Travel Requests:

Center Assessor (1) County Clerk (1)

Employment Changes:

Cumulative Bridge (1)	Auditor (3)	Burdette Park (1)
Prosecutor (2)	VCCC (2)	Commissioners (1)
Sheriff Department (4)	Circuit Court (1)	

Election Office: Voter Outreach Contract: Eastland Mall.

Health Department: Renewal of STD Grant.

Sheriff Department: Weekly Jail and Community Corrections Reports.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Madelyn Grayson	Patty Avery	Matt Arvay
Kent Irwin	Rob Faulkner	Bev Behme
Tom Bodkin	Fred Padget	Jim McKinney
Others Unidentified	Members of Media	

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

Recorded and transcribed by Madelyn Grayson.

REZONING BOARD NOVEMBER 15, 2004

The Vanderburgh County Rezoning Board met in session this 15th day of November, 2004 at 6:15 p.m. in Room 307 of the Civic Center Complex with President Catherine Fanello presiding. The rezoning petitions were heard during the course of the regularly scheduled Commission meeting.

President Fanello: We'll now have our rezoning meeting.

First Readings:

**VC-1-2005: Petitioner: Dayton Freight Lines
Address: 11601 N. Green River Road
Request: Change from Ag to M-2**

**VC-2-2005: Petitioner: Madisonville West Properties, Inc.
Address: 601 S. Boehne Camp Road
Request: Change from Ag to R-3**

President Fanello: Okay, we'll call to order, well, I guess, we don't need to call to order, we're already in order, rezoning meeting, first reading, VC-1-2005, change from Ag to M-2. Do I have a motion to approve on first reading?

Commissioner Mosby: Are you going to read both of them? You've got two.

President Fanello: Well, I know.

Commissioner Mosby: Motion to approve VC-1-2005 on first reading.

Commissioner Crouch: Second.

President Fanello: So ordered. First reading also, VC-2-2005 from Ag to R-3.

Commissioner Mosby: Motion to accept VC-2-2005.

Commissioner Crouch: Second.

President Fanello: So ordered.

Final Readings: VC-9-2004
Petitioner: Red Bank Development LLC
Address: Boehne Camp Road
Request: Change from Ag to C-4
Action: Approved 3-0

President Fanello: We have a final reading for VC-9-2004. Is there anyone here to speak to that ordinance?

Kevin Winternheimer: Is that the one that Mr. Shively had?

President Fanello: That's what I'm—

Kevin Winternheimer: He caught me in the hall and said he was going to be a few minutes late.

President Fanello: Okay.

Kevin Winternheimer: He had to speak at some meeting or something.

President Fanello: You're up, Mr. Shively.

Les Shively: I was talking to Mr. Risch about his road problem. I guess, he's already talked to you all and the Highway.

President Fanello: Yes, he has. We're going to have Kevin send a letter.

Les Shively: Good. Madam President and members of the Board of Commissioners, this rezoning request, just to make it simple, do you have a copy of the staff report?

President Fanello: Yes, I think I do. Does everybody have a copy?

Les Shively: Basically, we're seeking to rezone this little corner here, and the reason we're doing that is this is a funny shaped lot, as you can see, and the building, this is going to be a building for a medical family practice facility. Without adding this little bit of acreage, we would have to get variances for green space, parking, setbacks, and such, and the staff of the Plan Commission said we prefer you not to do that. We would rather you keep within code and add this little bit, this little bit of property will all go with the same legal description, it couldn't be used for anything else. By the way, everything south of that is up for rezoning to R-3, so it will continue with that residential buffer. So, again, this

rezoning is pretty straight forward, it's just to allow the family practice center to go forward without having to ask for a bunch of variances, which is what the Plan Commission staff recommended.

President Fanello: And it passed Area Plan?

Les Shively: Ten, one abstention, one no. The, I think the no, although, Mr. Lockard thought we owned the property to the south, and, anyway, didn't know why we didn't include it in the beginning. We told him that we didn't own that property anymore.

President Fanello: Is there anyone in the audience wishing to speak to this rezoning?

Commissioner Mosby: Motion to adopt VC-9-2004, and call the roll.

Commissioner Crouch: Second.

President Fanello: So ordered. Commissioner Crouch?

Commissioner Crouch: Yes.

President Fanello: Commissioner Mosby?

Commissioner Mosby: Yes.

President Fanello: And I vote yes.

Les Shively: Thank you very much.

President Fanello: Thank you, Mr. Shively. Rezoning passes. Do I have a motion to adjourn?

Commissioner Mosby: Motion to adjourn.

Commissioner Crouch: Second.

President Fanello: So ordered.

(The meeting was adjourned at 6:20 p.m.)

CONSENT ITEMS:

Travel Requests:

Health Department (3)	Center Assessor (1)	German Assessor (1)
County Clerk (1)	Perry Assessor (1)	County Engineer (1)

Requests for Telephone Service:

Superior Court (1)	Sheriff Department (1)
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Employment Changes:

Area Plan Commission (1)	German Assessor (1)	Circuit Court (3)
Center Assessor (2)	Auditor (3)	Prosecutor (4)
Sheriff Department (2)		

Sheriff Department:

Submit Weekly Jail and Community Corrections Reports.
Submit Surplus Letter of Miscellaneous Equipment.

Recorder: Submit Surplus Letter for Chairs.

Commissioners:

Submit Report of Lobbyist Activity.
Agreement with Library for use of Browning Events Room.

Those in Attendance:

Catherine Fanello	David W. Mosby	Suzanne M. Crouch
Bill Fluty	Kevin Winternheimer	Tammy McKinney
Matt Arvay	C.J. Risch	John Stoll
Dennis Hudnall	Gary Hohman	Bev Behme
Others Unidentified	Members of Media	

**VANDERBURGH COUNTY
BOARD OF COMMISSIONERS**

Catherine Fanello, President

David W. Mosby, Vice President

Suzanne M. Crouch, Member

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