

**VANDERBURGH COUNTY  
REZONING BOARD  
JANUARY 16, 2007**

The Vanderburgh County Rezoning Board met in session this 16<sup>th</sup> day of January, 2007 at 4:30 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

<b>Call to Order</b>
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President Musgrave: We'll go ahead and open the rezoning, for the agenda for the Vanderburgh County Commissioners, January 16, 2007 at approximately 4:30, advertised at 3:30.

<b>Election of Officers for 2007</b>
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President Musgrave: I understand that the first thing we need to do is elect a President.

Commissioner Nix: Excuse me, I make a motion that we re-elect Commissioner Musgrave as President.

Commissioner Tornatta: Second.

Commissioner Nix: All in favor? Oh.

President Musgrave: All in favor?

All Commissioners: Aye.

President Musgrave: Do we also have a Vice President at this? It's been a year since we did it last time.

Commissioner Tornatta: I recommend Commissioner Nix as Vice President.

President Musgrave: And I will second that. All those in favor of Commissioner Nix being Vice President say aye?

All Commissioners: Aye.

President Musgrave: The motion carries.

<b>Approval of November 21, 2006 Rezoning Meeting Minutes</b>
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President Musgrave: We go now to first readings.

Madelyn Grayson: We need to approve the minutes from November 21<sup>st</sup> also.

President Musgrave: Is there a motion to approve the minutes?

Commissioner Tornatta: Motion to approve the minutes.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

**First Readings:**

**VC-2-2007: Petitioner: R.D. Flowers Construction, Inc.**

**Address: 3916 Charlotte Street**

**Request: Change from AG to R-2**

**VC-3-2007: Petitioner: Hatfield Brothers Landholdings LLC**

**Address: 6511 and 6531 Peterburg Road**

**Request: Change from C-2 to R-3**

**VC-4-2007: Petitioner: Sterling Properties LLC**

**Address: 7800 Morgan Avenue**

**Request: Change from AG to M-2 with UDC**

Brad Mills: First readings, we have docket number 2007-4-PC, VC-2-2007, this is a zoning request at 3916 Charlotte Street, a change in zoning from agricultural to R-2. The next item is docket number 2007-5-PC, VC-3-2007, at 6511 and 6531 Petersburg Road, this is a request to change the zoning from C-1 to R-3. The last first reading is docket number 2007-6-PC, VC-4-2007, at 7800 Morgan Avenue. This is a change from agricultural zone to M-2 zone with a use and development commitment.

President Musgrave: Is there a motion to adopt these on first reading?

Commissioner Nix: So moved.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

Commissioner Nix: Do we need a roll call on that?

President Musgrave: Does this require a roll call, Mr. Mills?

Brad Mills: Not on first reading.

Commissioner Nix: Not on first? Okay, I'm sorry.

President Musgrave: Okay.

**Final Reading: VC-1-2007: Petitioner: Spurling Development LLC  
Address: 5103 Spring Valley Drive  
Request: Change from Ag and C-4 to C-2  
Action: Deferred until January 23, 2007**

Brad Mills: Alright, final readings? Alright. We only have one item tonight for final reading, and that is 2007-2-PC, VC-1-2007, Spurling Development is requesting to rezone two parcels located at 5103 Spring Valley Drive to C-2. The 1.16 acre site located north of Spring Valley Road is requested to be zoned from agricultural to C-2. The 3.22 acre site along the south side of Spring Valley Road is proposed to be down zoned from C-4 to C-2, to allow expansion of the apartment development. Both sides are adjacent to existing retirement housing. The County Engineer has the following comments, "As a part of the settlement agreement between Warren Spurling, Broadway Summit LLC and Vanderburgh County, perpetual and non-revokable access easements must be dedicated between Heritage Park Subdivision and the Schnuck's development. The perpetual access easement is required to eliminate the need for construction of Cullen Avenue between Davis Lant Drive and Spring Valley Road. The northern most parcel of the land that is proposed to be rezoned in this petition lies in the path of the proposed Cullen Avenue extension, therefore, recorded documents providing evidence that the perpetual, non-revokable easement must be provided prior to development of this northern parcel. If this perpetual, non-revokable easements do not exist, as required by law settlement agreement, there could still be a need for the extension of Cullen Avenue. Since the development of this northern parcel will eliminate any possibility of extending Cullen, no development of this northern parcel should proceed until it is verified that all required easements have been obtained." This is a petition to rezone C-4 and agricultural to C-2, a commercial classification which will allow construction of apartments, a residential use otherwise prohibited in the existing zoning classification districts. The site is within an area designated as commercial within the comprehensive plan. The surrounding area is completely commercial with mixed commercial and high density residential uses. This down zoning from the existing heavy commercial designation to the lighter commercial C-2 designation, and the rezoning to C-2 of a small, undeveloped parcel surrounded by commercial zoning, is consistent with the overall development plan for the area, and is consistent with the adjacent commercial and residential development. On January 11, 2007 the Area Plan Commission voted seven yes, zero no, and zero abstention to recommend approval.

President Musgrave: Have we changed our processes? So, you're not—

Brad Mills: We just didn't bring it for the one rezoning.

President Musgrave: Okay.

Brad Mills: With that, I also had conversation with Mr. Spurling and with John Stoll about the documents required, that the perpetual easement had been recorded. It's my understanding that it had been recorded, but there are some questions on that. So, you might call Mr. Stoll up to speak to that.

President Musgrave: Mr. Stoll?

John Stoll: I was forwarded a copy of the cross access agreement between the Spurling property and the Broadway Summit property. Everything looked okay other

than at the tail end of the document there was a provision in there that allowed for termination of the cross access easement between Spurling and the Broadway Summit properties. So, I contacted the County Attorney about that. After speaking with Andy Spurling of Spurling Properties, Mr. Spurling had suggested that he could commit to taking care of that through a recorded document and making it a non-revokable easement. In speaking with the County Attorney, he agreed that that would be acceptable. I don't want to put words in your mouth, but if you've got anything that I'm not stating here correctly, feel free to let me know. And, likewise, Andy Spurling can get up to the microphone as well and address what our end of the conversation was, but in a nutshell, the agreement would be modified, I guess, for lack of a better term, with a new statement indicating that the termination clause is eliminated, and that would take care of my concern with this. Other than that, the cross access easement addressed what it needed to as far as I was concerned.

President Musgrave: Has this document been filed?

Ted C. Ziemer, Jr.: The document has been recorded. The problem is, I mean, it was all appropriate in every case, described exactly the easements that were supposed to be described. In the end of the document it had a provision that either party could terminate the easement at any time. The settlement agreement specifically says that the cross easements must be perpetual. So, they did not comply with the terms of the settlement agreement. We're not allowed to approve a rezoning on a contingent basis, so, we have two options. We can accept the word of the Spurling's, on the record, that they will execute a document satisfactory to the County Attorney to make the cross easement for their part perpetual. We'll have to get the same thing from Broadway Summit, but we can't expect Spurling to do anything about that. So, if they make that statement on the record, that would be satisfactory, or we could put this off for a week and get this statement, I mean, get the document included within the next week, and approve the zoning next week, instead of today.

Commissioner Nix: My personal preference is to have it all cleaned up prior to us signing anything, because, I, you know, this board's been told things before that never did take place, and I just, I just have a problem with that.

Andy Spurling: Thank you. Andy Spurling, 3201 North Green River. To clarify, the agreement is not able to be terminated by either party. It has to be terminated by both parties. So, it's not a wildcard that Jim, I'm sorry, that Broadway Summit can do something aside from us, or we can do something aside from them. It's typical language of a two party contract that states this is the contract unless we agree otherwise, basically. But, what the preparer of the document failed to realize is that other people are relying on it. I can affirm that we'll correct that, and if we correct, I don't believe Jim Vincent or Broadway Summit would need to correct it, because we would be agreeing that we would never agree to alter the contract without the county's consent. So, I would appreciate it if you would approve it.

Commissioner Tornatta: What is, what is the time line? And, when would the next meeting be if that had to be accomplished?

Brad Mills: You could bring it back next week, if that's your desire.

Commissioner Tornatta: Then, how long would it take you to get that document signed?

Andy Spurling: We would be the only one signing it, so, it would be, I would need someone to prepare it, and to have you review it, I'm sure.

Commissioner Tornatta: Ted?

Ted C. Ziemer, Jr.: What I would like to do, I understand what you're saying, and I think I'm just looking at the document now and it does say that it would require both parties to agree to terminate it. I would rather have Broadway Summit sign it as well. If they don't, I agree with you that if you appropriately agree with the county that you will never consent to the termination of that easement, then it can't be terminated. But, in the next week, we could easily work with Broadway Summit and with Lakeside, I believe that's the entity that's involved here, is that right?

Andy Spurling: It's, actually—

Ted C. Ziemer, Jr.: Lakeside—

Andy Spurling: —it's actually Warren W. Spurling.

Ted C. Ziemer, Jr.: Well, according to the agreement, it's Lakeside Development LLC, which is a limited liability company. That's who will have to sign the revised agreement.

Andy Spurling: True, for the cross access. Then, yeah, and I can commit to that side of the drive. You know, Broadway Summit, I don't know—

Ted C. Ziemer, Jr.: I understand that. I understand that. What I'm saying is, that, yes, it can be done within a week, if we have the cooperation of the parties involved.

Commissioner Tornatta: And, does this set you back in anyway? For one week?

Andy Spurling: If it's a week, I don't guess it's going to, you know, it's not going to hurt us, no.

Commissioner Tornatta: Okay, I mean, I didn't know if there were things on the books—

Andy Spurling: We still have, we've been to site review, not site review, we've been to sub review for the apartment development, and we're just kind of waiting for the pieces to fall in place, and this is one of them. But, you know, a week's not going to kill us, if that's what it takes.

President Musgrave: Has there been a motion to recess this meeting for a week, while those documents are prepared and brought back next week?

Commissioner Tornatta: I make that motion.

Commissioner Nix: Second.

President Musgrave: We have a motion and a second. Any further discussion? All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

Ted C. Ziemer, Jr.: Just as a housekeeping matter, Les Shively is your attorney on this, is he not?

Andy Spurling: I believe he is, yes.

Ted C. Ziemer, Jr.: Okay, would you instruct him to contact me, and we will work out what kind of a document we want.

Andy Spurling: Yeah, we'll forward it to you directly.

Ted C. Ziemer, Jr.: Yeah, thank you.

Andy Spurling: Okay, thank you.

Commissioner Nix: I guess, we would not recess then? Or, we would recess, or how, what's the procedure for that so that we can meet?

Ted C. Ziemer, Jr.: You know, actually, this is just a continuation of the meeting of the Commissioners. The Commissioners hold their regular meeting, and when that agenda is finished, you then hear rezonings. So, you didn't have to recess the earlier meeting, or adjourn the earlier meeting. Nonetheless, this can be taken up at the regular Commission meeting next week, as part of your regular agenda.

President Musgrave: Without additional advertisement, is that correct?

Ted C. Ziemer, Jr.: Yes.

Brad Mills: That's correct.

President Musgrave: Alright. Well, then we'll have a motion then to adjourn?

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All in favor?

All Commissioners: Aye.

President Musgrave: Mr. Mills, would you go ahead and bring the visuals. The folks at home like to see those.

Brad Mills: Be happy to do that, sorry.

(The meeting was adjourned at 4:49 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Andy Spurling

Members of Media

Bill Nix

Brad Mills

John Stoll

Troy Tornatta

Madelyn Grayson

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Cheryl A.W. Musgrave, President**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

Recorded and transcribed by Madelyn Grayson.

**VANDEBURGH COUNTY  
REZONING BOARD  
JANUARY 23, 2007**

**Final Reading: VC-1-2007: Petitioner: Spurling Development LLC  
Address: 5103 Spring Valley Drive  
Request: Change from AG and C-4 to C-2  
Action: Approved 3-0**

President Musgrave: We will not adjourn at this point, we have to do final action on rezoning ordinance VC-1-2007. Happily, the folks from Area Plan are here and can now come forward to take us through that.

Bev Behme: (Inaudible).

President Musgrave: We do have the first item on the agenda is to approve the minutes, but I believe we just approved those as part of the consent agenda, right? Okay. Oh, that's the wrong agenda.

Bev Behme: Good afternoon, Commissioners. VC-1, excuse me, 2007, 5103 Spring Valley Road. Spurling Development is requesting to rezone two parcels located at 5103 Spring Valley Drive to C-2. The 1.16 acre site located north of Spring Valley Road is requested to be rezoned from agricultural to C-2. The 3.22 acre site along the south side of Spring Valley Road is proposed to be down zoned from C-4 to C-2 to allow expansion of the apartment development. Both sites are adjacent to existing retirement housing. As part of a settlement agreement between Mr. Spurling, Broadway Summit LLC and Vanderburgh County, perpetual and non-revokable access easements must be dedicated between Heritage Park Subdivision and the Schnucks development. The perpetual access easement is required to eliminate the need for the construction of Cullen Avenue between Davis Lant Drive and Spring Valley Road. This is a petition to rezone C-4 and agricultural to C-2, a commercial classification which will allow construction of apartments, a residential use otherwise prohibited in the existing zoning district classifications. The site is within an area designated as commercial within the comprehensive plan. The surrounding area is completely commercial, with mixed commercial and high density residential uses. This down zoning from existing heavy commercial designation, to the lighter commercial, C-2 designation, and the rezoning to C-2 of a small, undeveloped parcel surrounded by commercial zoning is consistent with the overall development plans for the area, and is consistent with adjacent commercial and residential development. On January 11, 2007, the Area Plan Commission voted seven yes and zero no, and zero abstentions to recommend approval. This petition was continued from



last week to allow an amendment of the access easement agreement required by the County Engineer and the County Commissioners.

President Musgrave: Does the petitioner have any remarks to make? Please come forward and state your name for the record.

Andy Spurling: Hi, Andy Spurling of Lakeside Development and Spurling Properties. I have been working with our attorney, Les Shively, and Mr. Ziemer to get the executed document. Can I bring this up? That's the photo copy. I've got the original.

Ted C. Ziemer, Jr.: Madam President, what I've been presented with is a copy of the amendment to cross easement agreement, which is satisfactory to make the cross easement perpetual. It is a copy of the executed copy. Mr. Spurling has the executed copy, which you will now proceed to have recorded?

Andy Spurling: Yes.

Ted C. Ziemer, Jr.: That will take care of this matter.

Andy Spurling: Would you like me to forward you a recorded document number?

Ted C. Ziemer, Jr.: Please.

Andy Spurling: Okay, I'll do that.

President Musgrave: Alright, since this is a continuation of a rezoning. I'll call again for remonstrators. Are there any remonstrators on this? I see none. Are there any questions from the Commissioners? Do you have any final remarks to make?

Andy Spurling: I think that will do it.

President Musgrave: Okay, is there a motion to approve?

Commissioner Tornatta: Motion to approve.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: Commissioner Nix?

Andy Spurling: Thank you.

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And, I vote yes. Show the rezoning as approved.

Andy Spurling: Thank you.

President Musgrave: Thank you. Unless there's any further business to come before the Board of Commissioners, I'll ask for a motion to adjourn.

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

(The meeting was adjourned at 4:32 p.m.)

**VANDEBURGH COUNTY  
REZONING BOARD  
FEBRUARY 20, 2007**

The Vanderburgh County Rezoning Board met in session this 20<sup>th</sup> day of February, 2007 at 4:50 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: We will now commence the rezoning portion of our meeting. Welcome, Bev Behme from Area Plan, and I will entertain a motion to approve the minutes.

Commissioner Tornatta: So moved.

Madelyn Grayson: They were actually incorporated into the Commission meeting of the previous meeting. So, we've already approved those.

**Final Reading: VC-2-2007  
Petitioner: R.D. Flowers Construction, Inc.  
Address: 3916 Charlotte Street  
Request: Change from AG to R-2  
Action: Approved 3-0**

President Musgrave: Ms. Behme, if you'll read off what's on the docket tonight?

Bev Behme: Alright, good afternoon, Commissioners. Happy Birthday, Mr. Ziemer. We have two zonings. The first one is VC-2-2007, 3916 Charlotte Avenue. R.D. Flowers Construction is requesting a change in zoning from agricultural to R-2 for the property located at 3916 Charlotte Avenue. This is a 3.9 acre site located at the end of Charlotte, south of Lexington. It is located between residences fronting along St. Joseph Avenue to the east, and Motoux Park to the west. The owners have filed a request for a subdivision approval, 4S2007, which indicates that an eight lot residential subdivision, Preston Oak Subdivision, is planned on this site. Subdivision review committee reviewed this subdivision February 13, 2007, and is tentatively scheduled for hearing by the Plan Commission at the March 8, 2007 meeting. Charlotte Street is paved to the northern property line of the site, and must be extended for the proposed subdivision. All utilities are available to this site. However, sewers must be extended to the site to accommodate the planned subdivision. The comprehensive plan future land use map recommends this area for residential use. The change in zoning to R-2 for this 3.9 acre site is consistent with the overall plan for the area. Area Plan Commission voted February 8, 2007, nine yes votes and one abstention.

President Musgrave: Petition representative, Shannon Frank, come forward and address.

Shannon Frank: Good afternoon, Shannon Frank-McCray, of Olive Frank and Klingler, here on behalf of R.D. Flowers, the petitioner in this matter. As set forth in the report that was just read, the proposed rezoning is in compliance with the comprehensive plan, which shows an eight percent increase in residential population in this township. There's a mixed use, and within a quarter mile, as you can see, surrounding the parcel at issue, that mixed use has six different current zoning classifications, R-1, M-1, M-2, C-2, C-4 and Agricultural. Multi-family housing is

considered to be an acceptable use as a buffer between residential zoning and commercial and other zoning. If you'll note, Lexington directly north of our proposed parcel, has approximately 32 homes running on Lexington. There is undeveloped land separating, then it Glisson's Auto Salvage, which you can see located to the south, the very large parcel. There's only eight lots that are going to be located on this just shy of four acre parcel. The traffic on those eight lots should be minimal, due to the number of units that are going to be put on there. The proposed units to be put on, if the subdivision is approved, are going to be approximately 1,300 square feet units each, two bedrooms, two bath, one and two car garage. The value of these homes, under the plan of the developer, will be substantially higher than the current homes that are on, currently built on Lexington, which those homes are approximately 40 to 50 years old. So, we certainly think it will not be any detriment to the existing homeowners just lying north of the proposed subdivision, if this is rezoned to R-2. The reason that R-2 was selected is because it is a very limited use, and my client wanted these surrounding lot owners to have a good understanding, and feel secure in exactly what he was going to be putting on the property.

President Musgrave: Are there any questions for Ms. Frank? Are there any remonstrators here today? Anyone want to speak either for or against this rezoning? Alright, come forward and state your name and address please.

Connie Wicker: My name is Connie Wicker, and I came to the last meeting and it didn't do us any good, and it's probably not going to do us any good this time. But, the street, that street right there, if you have two cars on it, it is very, very, very difficult to get through there. With all the traffic coming in and out, she said it will be minimal, and, okay, that's fine, but to the rest of us there's not that much room there. How are we going to get the traffic in and out of there? We also, not that it will do us any good, but, like I said, we went through the neighborhood and got a petition signed, and there's only two people in the whole neighborhood that wants this to happen. Everybody else does not want this to happen. That lot, it floods, which I know is part of the Drainage Board, and the narrow streets. How are we gonna fix that to coincide with the new properties?

President Musgrave: Did you have a petition that you wanted to submit for the record?

Connie Wicker: I mean, I can, yeah.

President Musgrave: Okay.

Connie Wicker: I also have pictures of how tight the streets are with the cars coming through.

President Musgrave: Okay. Thank you.

Commissioner Nix: Do all the homes back there have driveways? Are there any homes that do not have driveways?

Connie Wicker: All the homes do have driveways, but they're all mostly one car driveways.

Commissioner Nix: Beverly, can you scale, what is that?

Bev Behme: I'm sorry?

Commissioner Nix: Can you scale that for us?

Unidentified: It's not to scale.

Commissioner Nix: Oh, it's not to scale?

Unidentified: It's a Power Point.

Commissioner Nix: Oh, okay, I'm sorry. I thought you were on the—

Unidentified: I can switch to GIS.

Commissioner Nix: How long with that take to do?

President Musgrave: A few minutes.

Unidentified: I don't know, it depends on the connections.

Commissioner Nix: Oh, we got a good connection here.

President Musgrave: Wow!

Unidentified: Alright.

Bev Behme: Are you talking about the width?

Commissioner Nix: Curb to curb basically?

Connie Wicker: Curb to curb is 25 feet.

Commissioner Nix: Twenty-five?

Connie Wicker: Yes.

President Musgrave: Yeah.

Commissioner Nix: Yeah.

President Musgrave: I know, they're going to have like ten more cars.

Commissioner Nix: I'm just wondering...the one that would be going in, that would be?

Connie Wicker: Charlotte.

Commissioner Nix: Charlotte, yes.

Unidentified: It's actually the same distance as Lexington.

Commissioner Nix: Is parking the big issue? I mean, the width of the street, excuse me, is that the crux of this?

Connie Wicker: Yes.

Commissioner Nix: Okay.

Connie Wicker: Because there are people that have to park on the street. When we have, when neighbors have company over, you, getting through there is very difficult.

Commissioner Nix: Uh-huh.

President Musgrave: Okay, Commissioner, thank you very much.

Connie Wicker: Okay, thank you.

President Musgrave: Commissioners, do you have any further questions? Then, I'll ask Ms. Frank to do a summation.

Shannon Frank: Well, we certainly appreciate the couple of remonstrators that felt it important to be here today to voice their opinion. Certainly their concern with the existing road, Charlotte, being extended we think is unfounded from the standpoint that that road has been there from the same time that this subdivision was originally developed. The existing road, Lexington, is the same width as the road, Charlotte, that they're complaining about, and they, certainly, to my knowledge, there hasn't been any complaints in front of the Commissioners with respect to the current traffic on Lexington, and their not being wide enough. We believe that it was the intention that there be further development on this property, given the fact that some 40, or however many years ago the road was extended, that being Charlotte, that it did stop without a cul-de-sac or curb or anything of that nature, as shown on this picture, that it was intended that there would be future development. We believe that what my client is proposing is certainly not egregious in anyway shape or form with it only being eight lots, and that there will, because of what he plans to put back there, there would be a low traffic count, although I don't have that exact proposed information with me today, but I'm certain that Morley's representatives could answer that. With respect to drainage, we feel that those issues will be addressed at the Drainage Board, which I believe is scheduled for next week. Thank you.

President Musgrave: Okay, Commissioners, if you have further questions, now would be the time. In the absence of any further questions, is there a motion to approve?

Commissioner Tornatta: Yes, motion to approve.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

Ted C. Ziemer, Jr.: Roll call.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And I vote yes. Show VC-2-2007 as approved.

**Final Reading: VC-3-2007  
Petitioner: Hatfield Brothers Landholdings LLC  
Address: 6511 and 6531 Petersburg Road  
Request: Change from C-1 to R-3  
Action: Approved 3-0**

President Musgrave: We move now to docket 2007-5-PC VC-3-2007, Hatfield Brothers Landholdings LLC. Mr. Hatfield?

Bev Behme: Hatfield Brothers Landholding is requesting to down zone the properties located at 6511 and 6531 Petersburg Road from C-1 to R-3. This is a 1.46 acre site at the northeast corner of Petersburg Road and Petersburg Place. The lot fronting along Petersburg Road, within Petersburg Place Subdivision, was rezoned to C-1 in 1985 for a future neighborhood commercial development. The lot west of this site at the intersection of Petersburg Road and Greendale Drive was developed as an assisted living facility in 1997. The remaining lots are undeveloped to date. This is a request to down zone two of the vacant commercial lots to R-3 for residential condominiums. Subdivision review committee reviewed plans on January 9, 2007 for four, four unit buildings planned on the site. A single access is planned onto Petersburg Place for the condominiums. Site review will address compliance with all code requirements upon submission of final plans for the development of the site. The comprehensive plan future land use map recommends this area for residential use. This change in zoning from R-3 for this 1.46 acre site is consistent with the overall plan for the area. The proposed site is located north of the Hamilton Golf Course. The comprehensive plan recognizes that multi-family is an appropriate buffer use adjacent to single family residential. Area Plan Commission on February 8, 2007 voted nine yes votes and one abstention.

President Musgrave: Mr. Hatfield?

Jeff Hatfield: How is everybody?

Commissioner Tornatta: Alright.

Commissioner Nix: How you doing, Jeff?

Jeff Hatfield: My name is Jeff Hatfield. I own Hatfield Brothers Landholdings, and I also own Core Contractors. Hatfield Brothers Landholdings holds and sells real estate, Core Contractors constructs it. I'm going to pass around a board of the floor plan and the elevation of the condominium project that we would like to develop there. What you'll find is that it's a three bedroom, three bath condominium. We hope to retail them for between \$200,000, and, thank you, \$200,000 and \$215,000. Many of the other condominiums in the area are in that price point, and actually some are twice as much. The area is a nice area, nice residential area. The property is currently zoned for commercial, but, I think if anyone drives down Petersburg Road, I personally would not think commercial development would be good for the area, but, you know, others might disagree. The entrance, I've talked

to several of the residents in Old Petersburg Place, and I don't want to pretend to speak for them, but the comments they've made to me, the things that were important to them were that it stay residential in nature. Those trees down that street are very important, which we plan to keep. There's only two that we'll have to take out, to create the entrance, which will be right there in the center. The others will stay. Also, on our plat you'll notice that we only, you know, put four buildings on the property. We could have put a different style of condominium on the property, it just, you know, it seemed a better plan to spread it out, create a lot of green space. The distance between the back side of this building on the north side, which would be here, and the property line is about 45 feet, which is a pretty good distance. Then the distance from the building here in this corner to Petersburg Road, is, I think about, 60 feet, 50 to 60 feet. So, we tried to create a lot of green space on the property so the residents and the area didn't feel like it was just crammed in there. I'll entertain any questions.

President Musgrave: Commissioners, are there any questions? Thank you, Mr. Hatfield. Are there any remonstrators on this project, either for or against who wish to speak? I see no one. If you wish to make a summation, you can. In the absence of questions, is there a motion to approve?

Commissioner Nix: I'll make a motion that we approve.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And, I vote yes. Show the motion as approved.

Jeff Hatfield: Thank you.

Commissioner Nix: Thank you.

President Musgrave: I believe that completes our rezoning agenda. Is there a motion to adjourn?

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: We are adjourned.



(The meeting was adjourned at 5:02 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Shannon Frank

Others Unidentified

Bill Nix

Bev Behme

Connie Wicker

Members of Media

Troy Tornatta

Madelyn Grayson

Jeff Hatfield

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Cheryl A.W. Musgrave, President**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
APRIL 17, 2007**

The Vanderburgh County Rezoning Board met in session this 17<sup>th</sup> day of April, 2007 at 3:52 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: We move now to the rezoning. I don't believe we have anything to vote on today?

Bev Behme: No.

President Musgrave: Just things to read into the record.

**Approval of February 20, 2007 Rezoning Meeting Minutes**

Bev Behme: Well, you can approve the rezoning minutes of February 20, 2007.

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

**First Readings:**

**VC-5-2007: Petitioner: Hardee Glisson, Jr.  
Address: 3820 N. St. Joe Avenue  
Request: Change from AG to M3**

**VC-6-2007: Petitioner: Scott Straub  
Address: 14101 Big Cynthiana Road  
Request: Change from AG to C-4**

**VC-7-2007: Petitioner: Lotfi Hadad  
Address: 700 and 720 Kimber Lane  
Request: Change from AG to C-2**

Bev Behme: And, we have one, two, three, four, five, six, seven first readings. So, docket number 2000, I'm sorry, VC-5-2007, petitioner, Hardee Glisson, Jr., 3820 North St. Joe Avenue, a change from agricultural to M3. VC-6-2007, petitioner, Scott Straub, 14101 Big Cynthiana Road, change from agricultural to C-4. VC-7-2007, petitioner, Lotfi Hadad, 700 and 720 Kimber Lane, change from agricultural to C-2.

<p><b>First Readings: Continued</b></p> <p><b>VC-8-2007: Petitioner: Arem Corporation</b> <b>Address: 800 N. Boehne Camp Road</b> <b>Request: Change from R-4 to C-2 with UDC</b></p> <p><b>VC-9-2007: Petitioner: Level Development LLC</b> <b>Address: 701 Jobes Lane</b> <b>Request: Change from AG to R-3</b></p> <p><b>VC-10-2007: Petitioner: Dauby Properties &amp; Investments LLC</b> <b>Address: 7445 N. Green River Road</b> <b>Request: Change from AG to C-4</b></p> <p><b>VC-11-2007: Petitioner: Dauby Properties &amp; Investments LLC</b> <b>Address: 7445 N. Green River Road</b> <b>Request: Change from AG to R-3</b></p>
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VC-8-2007, petitioner, Arem Corporation, 800 North Boehne Camp Road, R-4 to C-2 with a use and development commitment. VC-9-2007, Level Development LLC, 701 Jobes Lane, change from agricultural to R-3. VC-10-2007, Dauby Properties and Investments LLC, 7445 North Green River Road, agricultural to C-4. VC-11-2007, Dauby Properties and Investments LLC, 7445 North Green River Road, agricultural to R-3. These are on the agenda for May and June Plan Commission, then they'll be back.

President Musgrave: And we don't need to vote to receive them into first reading?

Bev Behme: You can.

President Musgrave: Would you like us to?

Bev Behme: Yes, please.

President Musgrave: Alright.

Commissioner Tornatta: I make a motion to receive these first readings.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

Ted C. Ziemer, Jr.: Roll call.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: And, I vote yes. So, the Area Plan Commission will then hear these over May and June?

Bev Behme: Right.

President Musgrave: And, some of them will come back to the Commissioners for final vote in May–

Bev Behme: And some in June, right.

President Musgrave: Okay, alright.

Bev Behme: Look forward to seeing you.

President Musgrave: Thank you. Thank you. Bye-bye. I believe if there's no other business, if we could have a motion to adjourn.

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. There is no drainage board meeting today.

(The meeting was adjourned at 3:52 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Ted C. Ziemer, Jr.

Others Unidentified

Bill Nix

Bev Behme

Members of Media

Troy Tornatta

Madelyn Grayson

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Cheryl A.W. Musgrave, President**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
MAY 15, 2007**

The Vanderburgh Drainage Board met in session this 15<sup>th</sup> day of May, 2007 at 3:59 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

Bev Behme: Good afternoon.

President Musgrave: Good afternoon. We will open the rezoning portion of this meeting.

**Approval of the April 17, 2007 Rezoning Meeting Minutes**

President Musgrave: Is there a motion to approve the minutes of the last meeting?

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

**Final Reading: VC-5-2007  
Petitioner: Hardee Glisson, Jr. & Gregory Glisson  
Address: 3820 N. St. Joseph Avenue  
Request: Change from AG to M3  
Action: Approved 3-0**

Bev Behme: We have three, I'm sorry, two final readings. 2007-13-PC, VC-5-2007, 3820 North St. Joe Avenue. Hardee and Gregory Glisson are requesting a change in zoning from agricultural to M3 for a portion of their property located at 3820 North St. Joe Avenue. This is a 3.1 acre site located west of St. Joe Avenue between Allen's Lane and Mill Road. This site is currently occupied by a commercial salvage business. The existing Glisson salvage business has a gated storage area interior to the property. Existing access for customers, employees and service vehicles is available on St. Joe Avenue. No new access is required, and none shall be permitted. In November 2006, the Glisson's submitted site plans for review by site review committee for an addition to one of the commercial buildings on the Glisson salvage site at 3820 North St. Joe Avenue. The Glisson's were notified by staff of the need to rezone and obtain special use number nine approval for this 3.1 acre expansion area to bring their site into compliance with zoning code requirements. Prior to any further construction and/or additions to the salvage site. This is a request to change the zoning to allow the storage and salvage of vehicles and expansion of the existing use. The original ten acre Glisson salvage site was rezoned to M1 and was granted special use approval in 1984 for the operation of the Glisson salvage yard on the site. In 1985 the ten acres adjacent south of the Glisson site was rezoned to M1 and was granted special use approval to bring the existing triple A salvage operation into compliance. This is a request to add a 3.1

acre triangular parcel adjacent west of the two salvage yards to M3 for an expansion of the Glisson salvage site. Total Glisson site will be 13.1 acres. Approval of special use nine by the Board of Zoning Appeals is required in addition to the approval of the rezoning. The comprehensive plan future land use map indicates that the east side of St. Joe Avenue at this location is projected to be predominantly industrial, while the west side of St. Joe Avenue is a mix of industrial, commercial, park and residential. This site is located on the west side of St. Joseph Avenue in an area of very mixed zonings and uses. Another salvage yard is adjacent south to the Glisson site. The area immediately adjacent to the north is agricultural and residential. Motoux Park is northwest of the site. Locust Creek forms a natural barrier along the western property line. The M3 heavy industrial classification allows many uses which are inappropriate adjacent to residential districts. If this site is approved for industrial, setbacks must be provided and maintained for protection of any adjacent non-industrial development. Any industrial use adjacent to residential must maintain a minimum 20 foot open and unobstructed grass buffer. An eight foot opaque fence is required to screen all salvage vehicles from public view. Area Plan Commission on May 10, 2007 recommended approval with seven affirmative votes and one abstention.

President Musgrave: Thank you. We ask for the petitioner representative, Mr. Les Shively, to come forward.

Les Shively: Madam President, members of the Board of Commissioners, I'm representing the Glisson's in this request. I really don't have anything to add to the staff field report, it's very comprehensive. I just would bring to your attention that this pie-shaped, or triangular shaped piece of property will, basically, run along the eastern border, along both salvage yards, the triple A, which is a competitor, and the Glisson facility. As I think Bev pointed out, the creek makes the natural barrier, we won't go beyond the creek. We're not going to be asking for any variances. We're going to, you know, we'll respect all of the required setbacks. The fence, I think the fence is already in place, even though, you know, it's not rezoned, but, in fact, the opaque fence is already in place. Again, this is just kind of the tail end of what's already there. More than happy to answer any questions you have about this request. As Beverly told you, the vote before the Plan Commission, the recommendation was seven in favor with one abstention.

President Musgrave: Thank you. Are there any remonstrators? Please come forward, sir, and state your name and address for the record.

Joe Titzer: My name is Joe Titzer. I live at 3900 and 3906 St. Joe Avenue. My problem with this zoning is they're going to need electric going all the way to the back to this other addition. It wasn't too long ago they built a building right along the front there, and there's supposed to be a four foot, can you imagine a four foot zone barrier, buffer zone barrier all along my side of, you know, next to me? I think they have the idea of running the electric all the way back to the back and across. But, anyway, since the barrier is there between me and their property, ever since they've had that place there, I have been mowing that barrier, the rezoning buffer zoning there. And it's, in fact, I have a copy here if I could, could I show it to you? This is my property, oh, I'm sorry. This is my property here, and this is the Glisson's. Here is the easement.

Commissioner Nix: Mr. Shively?

President Musgrave: Mr. Shively, would you like to come up here?

Les Shively: I've already seen it. He owns it. He owns it. We gave it to him when we did the first rezoning. He owns it. I don't know what he's—

President Musgrave: Just go ahead.

Joe Titzer: See the property, this is my property here, and this is Glisson's. This is St. Joe Avenue. This is an easement for a guy wire, and that's the only easement they've got there.

Les Shively: But, that's not affecting this subject, that's not on the subject property. It's not on the property we're rezoning.

Joe Titzer: Yes, but—

President Musgrave: In your rebuttal you can show us where he's referring to, and the buffer zoning you're referring to. (Inaudible).

Les Shively: I'll do the best I can.

Commissioner Nix: Sir, what's the concern with this? You say you've been mowing, is it something they should mow?

Joe Titzer: Well, yes, you see that's a quarter of a mile lane.

Commissioner Nix: Okay.

Joe Titzer: The electric company has the easement here on my property.

Commissioner Nix: Utility easement, sure.

Joe Titzer: That's where the poles are, as far as here. Then they, when they built this other building, they did not get an easement to put the poles in there.

Commissioner Nix: Who put the poles in? Was that Glisson? Or was that the utility company?

Joe Titzer: Well, the utility company put the poles in. They came in there, and I have two poles (Inaudible) personal property put in there to bring the cable line into my house and the telephone line.

Commissioner Nix: Okay. This isn't addressing this rezoning though, correct? Is that what you're telling me? Is that what you're saying, Mr. Shively?

Les Shively: Right. It's my understanding that this is on the property that is already zoned M1 with a special use. When that one pole was set back then, there was an accommodation made, in fact, some additional, a little strip of land was deeded to Mr. Titzer back then. As he's described those other utility facilities, they're there to serve his property. I didn't really have anything to do with putting those in.

Joe Titzer: There was a buffer zone, a four foot buffer zone there.

Les Shively: I'll take your word for it.

Commissioner Nix: It's not dedicated, as far as you know, not a designated utility easement?

Joe Titzer: The buffer zone is on their side of this line.

Commissioner Nix: Okay.

Joe Titzer: When they had the zoning variance on that, they was arguing about who was going to mow that. I said, "Well, you know, they give a buffer zone, I'll mow back here anyhow. So, I'll go ahead and mow it." But, now they come in here and they pulled out my two poles and put in taller ones and hung their transformers to feed Glisson's, and that's all on my property. See, it's on this—

Commissioner Nix: This sounds like an issue that needs to be taken up with the utility company then.

Les Shively: I guess.

Joe Titzer: Well—

Les Shively: I think—

President Musgrave: We can't resolve it here.

Commissioner Nix: No, there's nothing we can do.

Joe Titzer: The only thing that I have any, I'm not worried about them poles that's on there already, I'm worrying about if they put some on that buffer zone.

President Musgrave: Okay. I'll give you an opportunity to state that on the record.

Joe Titzer: Okay.

President Musgrave: Anything else?

Joe Titzer: Well, that's all that concerns me is that I don't want them poles.

Commissioner Nix: You may want to contact the utility company to see if they can present you with an easement before they place those poles.

Joe Titzer: I don't want an easement.

Commissioner Nix: Okay.

Joe Titzer: It's not for me, it's for Glisson's.

Commissioner Nix: Okay. Thank you.

President Musgrave: Thank you, sir. At this point in our agenda, is where I call for questions from the Commissioners? Are there any questions?

Commissioner Nix: I have none.

President Musgrave: A summation from Mr. Shively. If you could please—



Les Shively: Briefly, I wasn't involved in the earlier rezoning. Mr. Curt John handled that, I understand. So, maybe he has more knowledge of what took place back then. It's my understanding that the issue of how it was going to get mowed when the utility pole was placed would, can create, if they don't use the proper setbacks, can be a little bit of a hassle. I think what they ended up doing was deeding him that strip so he could control it and mow it and not have any problem, it wouldn't affect his land. So, that's what Mr. Glisson informed me. But, as far as the area here, we're not going to set any new utility poles. So, we're not going to have an issue like that occur in this particular case. But, if there are some particular concerns with regard to what's existing out there, I would suggest that he talk to, Mr. Hardee Glisson is not there, but his son, Zach, is on site all the time. I suggest he contact Zach there at the office and maybe somebody from Vectren can come out and they can figure out what's going on. But, this is not on the property we're trying to rezone. This is on the property that was already zoned and has a special use. One thing I did want to tell the Commissioners, we understand that we have to get the special use. We have not filed that application. We thought it would be somewhat presumptuous to do so until you took final action. So, but we understand we have to do that, and will do that.

President Musgrave: So, basically, this land is already being used for the purpose for which you're seeking the rezoning? It's perhaps an oversight—

Les Shively: It was an oversight. What happened, there were two parcels, obviously adjacent that were acquired along about the same time shortly there after the rezoning was done. But, the rezoning didn't pick up the triangle, and this was brought, the staff picked this up when, I guess, they came over to the Plan, or they came to site review, they were going to put a building out there, and they said, "Wait a second, we don't show that it was ever rezoned." That's how it came to light.

President Musgrave: Alright, they will be putting a building on this triangular shape?

Les Shively: Actually, they're probably not going to put a building now. They've decided to do something a little different on the area already rezoned. But, they are going to do everything else that I represented to you, the opaque fencing, which I think is already in place, because again, they thought that was part of the original deal. In fact, they are improving, putting a new fence up is my understanding. There's no building planned at this time.

President Musgrave: Alright, and the property that this gentleman is talking about abuts to the north, on the north line?

Les Shively: Yes, Ma'am.

President Musgrave: And he's talking about the area closest to St. Joseph?

Les Shively: Right.

President Musgrave: And this parcel is half a mile away at the creek?

Les Shively: Right. A good distance. As I walked back there on a day quite like today, and it's a good distance back there from St. Joe Avenue, I'll guarantee you.

President Musgrave: Alright.

Commissioner Tornatta: I would like to make a motion to approve, with the caveat that your client make due diligence just to address some issue with Mr. Titzer–

Les Shively: Sure.

Commissioner Tornatta: –and then see if we can't come to a happy little compromise–

Les Shively: Sure.

Commissioner Tornatta: –and be done with that. So, I would make a positive motion.

Ted C. Ziemer, Jr.: I don't think we can make the approval of the zoning conditional. You approve the zoning or not. You can ask Mr. Shively to do that–

Commissioner Tornatta: Okay.

Ted C. Ziemer, Jr.: –but I don't think you can make it a condition of the rezoning.

Commissioner Tornatta: Okay, I would like to ask you to do that, but I'm going to approve the petition.

Les Shively: Thank you.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

Les Shively: Thank you very much.

President Musgrave: That would be Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And I vote yes.

**Final Rezoning: VC-6-2007**  
**Petitioner: Scott Straub**  
**Address: 14101 Big Cynthiana Road**  
**Request: Change from AG to C-4 with UDC**  
**Action: Approved 3-0**

President Musgrave: We move now to 14101 Big Cynthiana Road.

Bev Behme: 2007-15-PC, VC-6-2007, 14101 Big Cynthiana Road. Scott Straub is requesting a change in zoning from agricultural to C-4 for the property located at 14101 Big Cynthiana Road. This is a 4.9 acre site located on the east side of Big Cynthiana Road just south of Armstrong Road. This is a use and development commitment that is included as part of this rezoning request, which limits uses of the site to retail, wholesale and commercial lawn and garden center. Sales and rental and service of lawn mowers, lawn tractors, tractors and all types of outdoor power equipment, and all parts, supplies and equipment incidental thereto. A copy of the commitment is included with the staff field report. Many uses permitted with a C-4 district have the potential to generate significant traffic. The conceptual site plan submitted with this rezoning request indicates a new commercial access is planned on to Highway 65 towards the south end of the site. Sufficient on-site circulation must be provided to accommodate trucks and vehicles with trailers. Site review will address compliance with all code requirements upon submission of plans for the development of the site for the proposed lawn mower, lawn and garden center and related sales and service. Parking and access drives for commercial use must be paved and installed to commercial standards. INDOT approval will be required for State Road 65 access for this site. Information submitted by Mr. Straub indicates that electric and German Township water are available to this site. This area is served by septic systems. Due to the absence of sewers and other infrastructure, a comprehensive plan future land use map designates this area as agricultural and undeveloped, including scattered residences. Surrounding area is completely agricultural and residential, with the exception of a small M2 zoned shop located immediately north of this site. Area Plan Commission on May 10, 2007 recommended approval with seven affirmative votes and one abstention.

President Musgrave: Thank you. Mr. Bob Rheinlander is the attorney for the petitioner.

Bob Rheinlander: Good afternoon, Madam Chairman, Commissioners. I represent Mr. Straub who is the petitioner in this matter. They presently have a business several miles to the north, up by the Moto Mart, Straub Service, and they've flat outgrown that in the last few years. In fact, when the trucks come in there's hardly room for the customers. So, they have a good problem, but they've got growing pains. The traffic situation, basically, Mr. Straub estimated in his peak season he runs like about 35 vehicles a day. If he tripled his business that would be 100 plus vehicles a day, not a whole lot of traffic. The use is, I would suggest, is entirely consistent with the area, rural and agricultural, the lawn and garden and that type of thing. So, I don't have a whole lot more to add. I would be available for questions.

President Musgrave: Are there any remonstrators for this petition? I see none. Are there any questions from the Commissioners? Do you have any further remarks to make, Mr. Rheinlander?

Bob Rheinlander: No, Ma'am.

President Musgrave: Is there a motion?

Commissioner Nix: Move approval.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And I vote yes. Show the motion as approved. Unless there's any further business to come before the rezoning—

Commissioner Nix: Motion to adjourn.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. Thank you.

(The meeting was adjourned at 4:20 p.m.)

**Those in Attendance:**

Cheryl Musgrave

Bev Behme

Joe Titzer

Members of Media

Bill Nix

Madelyn Grayson

Bob Rheinlander

Troy Tornatta

Les Shively

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Cheryl A.W. Musgrave, President**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
JUNE 19, 2007**

The Vanderburgh County Rezoning Board met in session this 19<sup>th</sup> day of June, 2007 at 4:19 p.m. in room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: We will start the rezoning portion of our Commissioners agenda at this time, and we'll wait for Beverly to....is this your last meeting, or do we have one more?

Bev Behme: No, I have two more.

President Musgrave: Two more, okay, well.

Bev Behme: July and August.

President Musgrave: She's going to retire.

Commissioner Nix: No, she can't.

**Approval of the May 15, 2007 Rezoning Meeting Minutes**

Bev Behme: We have approval of the rezoning minutes from May the 15<sup>th</sup> meeting.

President Musgrave: Is there a motion to approve the minutes?

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

**First Reading: VC-12-2007: Petitioner: DPF, Inc.  
Address: 4401 Hogue Road  
Request: Change from AG to C-4**

Bev Behme: We have one first reading, that is VC-12-2007. The petitioner is DPF, Inc., 4401 Hogue Road, change from agricultural to C-4. You can just, a motion to send those to Plan Commission.

President Musgrave: Is there a motion?

Commissioner Nix: So moved.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries.

**Final Reading: VC-9-2007**  
**Petitioner: Level Development, LLC**  
**Address: 701 Jobes Lane**  
**Request: Change from AG to R-3**  
**Action: Deferred Until 7/17/07**

Bev Behme: We have three final readings. The first is 2007-18-PC VC-9-2007, 701 Jobes Lane. Level Development LLC is requesting to rezone the property located at 701 Jobes Lane from agricultural to R-3. This is a 29.33 acre site located predominantly on the west side of Jobes Lane, north of city limits and south of the end of Jobes Lane. Access and traffic are major issues which must be addressed prior to rezoning of land for higher density use. The road improvements necessary to accommodate growth must be in place when needed for our community to meet the goals and the comprehensive plan of developing a transportation system which moves people and goods safely and in an efficient manner. Evansville MPO has raised concern that the existing 12 foot wide access for this proposed development is adequate for two way traffic. The pavement should be widened to a minimum 24 feet to provide standard two way access. County Engineer, John Stoll comments;

“Number one, improvements to Jobes Lane will be necessary if the site is developed, and Vanderburgh County has no plans to improve this road. As a result, it is recommended that this petition be denied unless the developer is committed to improving Jobes Lane. Jobes Lane is currently not wide enough to accommodate two way traffic, and therefore it cannot provide suitable access to the development. Number two, any public roads that must be constructed as part of this development will be limited to a maximum grade of ten percent. This may be difficult to achieve because of the terrain of the site.”

This site is in an area designated by the comprehensive plan as an area of residential development. This step up in zoning to R-3 is consistent with the overall plan for the area. Although consistent with the comprehensive plan in one area, it is inconsistent in another area. Both Evansville MPO and County Engineer, John Stoll, have identified a potential area of conflict with access for the development. The comprehensive plan states that it is essential for development proposals to be accompanied with commitments to construct the infrastructure improvements necessary to accommodate site generated traffic. No information has been submitted by Level Development which addresses the number of units proposed for this site, and there is no commitment addressing the needed infrastructure improvements. According to the comprehensive plan, development of proposals that are not accompanied with commitments to construct the necessary infrastructure improvements to accommodate site generated traffic should be denied. At the Area Plan Commission meeting of June 14<sup>th</sup>, a draft copy of a private covenant was submitted to Area Plan Commission regarding the use of the property. Area Plan Commission voted eight yes and two abstentions to send this forward to you.

President Musgrave: We welcome now the attorney for the petitioner, Ms. Krista Lockyear.

Krista Lockyear: Good afternoon, Madam President, members of the Commission. My name is Krista Lockyear. I'm here representing Level Development LLC, who is the petitioner with regard to this matter. Level is owned and managed by Dan Buck. I believe most of you know Dan Buck who has been building homes in Evansville since 1980, and has a really attractive dream for this area here on the west side. Dan came in, looked at this property and as everyone is familiar out here, it's an area of increasing development. A lot of commercial development, obviously, encroaching onto the residential area, as well as a lot of student housing, and a lot of discussion about student housing over the past few years. Dan's interest in this area is to do a residential development, but to preserve as much of the topography, the trees, the dips and valleys and the beauty of this area as possible. To do that, his best option would be to, rather than put in your typical flat subdivision, to put in some condominiums, so that he can move around the topography of the land. His idea is to put in really two different types of condominiums on this development. For stand alone and/or duplexes, which would resemble any other single family dwelling or duplex. He's got a price point of \$175,000 to \$250,000. Those would have potentially walk out basements. Every unit, including the multi-family units will have their own garage attached. The second type of development on this property would be up to six units in a building, with a price point of \$115,000 to \$165,000. Again, those units will each also have an individual, attached garage for each unit. Dan contacted me about this rezoning, and we started looking at the area and who our neighbors are, and Mr. Mike Lockard, who is a member of the Plan Commission, is a neighbor of this property, as is his father. Mike lives at the intersection of Shady Court, which you can see down in the lower right hand corner of the picture. His father lives up in the, exactly where that pointer is, up in the top corner of the property. I contacted Mike and we got together, we had a preliminary discussion about this rezoning and about potential concerns of the neighborhood. Most of you probably are aware it's a close, organized neighborhood. They recently obtained the grant and got the water and sewer brought into that area to serve their residences. So, they've kind of been through the development and construction route and planning previously. After Mike and I met, Dan and I went out and met Mike and walked the property, looked at Dan's plans for the property, answered questions, kind of took Mike's expertise of the area, and, again, developed projects and plans a little further. We finally did have a neighborhood meeting, invited, with the required notices that we sent to all the abutting neighbors. We invited all the neighbors to attend a meeting at the Red Bank Library. The West Side Improvement Association facilitated that meeting for us, and sat in with us, and we talked to neighbors, addressed their concerns. Dan has given some of them some written explanations of questions that they had had about the development, and, I believe have successfully gone a long way in becoming who Dan hopes to be the new neighbor in the block and developing very good relations there. At this point, and all of this leading up to the Plan Commission hearing. We walk in to the Plan Commission hearing with the idea that we'll do, in writing, a commitment that we would not do apartments on this project. The neighbors were satisfied that we would put this in writing, it would be a private covenant, and run in favor of the neighbors. Mr. Lockard is familiar, and the West Side Improvement familiar with these type of covenants. We're satisfied with that as well. At the Plan Commission meeting the request was that we add to that private commitment, the commitment that Dan would widen Jobes Lane to a minimum of 24 feet in width. Dan also agreed to make that commitment in writing in favor of the Commissioners. Leads us to this week, because the Plan Commission meeting was last week, and several conversations that Mr. Ziemer and I had over the last couple of days, we are trying to come up with ideas, because Dan hasn't bought the land yet. How he can bind this development to include the widening of Jobes Lane, as well as the non-binding, or non-ability to



put apartments on this project. A little bit of a chicken and an egg here, because for Dan to go forward with the development, he's got to close. But, he doesn't want to close on the property until he's assured that he gets the rezoning. Long and short, since we can't commit to buying the land with the widening of the road and the no apartment covenant and restriction, we would ask that you delay a vote on this rezoning for 30 days so that we can at least either get the owners to sign the covenant itself, or Dan could get to closing so that he could sign the covenant to bind this real estate. The reason, and I apologize for taking up your time tonight again is, if there's any concern about that zoning, we wanted to go through with the process and flesh out any other final problems that we may have, or issues that we should address before the final vote. That all having been said, I would be happy to take questions. Dan is here, and I believe Fred Padget with the West Side Improvement Association is willing to speak as well.

President Musgrave: Commissioners, do you want me to call for remonstrators before you ask for questions? Are there any remonstrators here on this project? I suppose that's you, Mr. Padget. Please come forward and state your name for the record.

Fred Padget: (Inaudible).

President Musgrave: Well, that's the name they gave me to call for, so.

Fred Padget: There you go. I'm Fred Padget. I represent West Side Improvement Association. We did meet with the developer and the attorney last Tuesday. There were a few neighbors there. We talked about several of the concerns. The, I guess, the concerns, and I'll just go through them. One had to do with road closure. When they had put in the water/sewer lines they had some road closures, and so they were quite concerned about that. The developer said the only road closure that he might possibly have, is if he has to put a pipe across the road where they want to do that all at one time. But, other than that, there would probably not be any road closures, and if there would have to be, that all of the neighbors would receive prior notice. Another concern was the road improvement that's been expressed by the County Engineer and also the MPO. At this point we feel satisfied that the intent is to widen the road, and the question comes up about the covenants and how we get to that point. But, we're satisfied with that answer. We asked about ingress/egress or entrance/exit to the apartments on the west, the Copper Creek Apartments. We were assured that would not happen. We don't want that to happen. One of the neighbors has a lake that borders right on the property that's in question here. He wanted to work with the developer on that, and, I think, I got the impression that the developer was willing to do that also. The density of housing was a concern, in the beginning, and we think the plan, as it's been verbalized with the condominiums, is satisfactory. Actually, it's probably a good plan, all things considered. We also had concerns about the terrain and the trees and the wooded areas, and, again as the plan's been verbalized, I think that satisfies our concerns in that regard. All these questions about drainage, I know this will be handled at site review, but the answers that we were given there were also satisfactory. The attorney did mention a letter that one of the neighbors had written requesting information, and in some respects, maybe some commitments. The developer was very responsive to that. He answered back, in writing, within just a few days after the request. We appreciate that. The one thing that came up today, and I see, Madam President is reading it, is the e-mail from Mike Lockard. It's about a page and a half, and I won't go through it. One of the things he was concerned about, and I think this is something we should be concerned about is parking. Right now, on both sides of Jobes Lane, as it goes

out into Middle Mount Vernon, we probably should consider either through the Safety Board or however we could get it done that parking be restricted to only one side of the road after the development is in. The covenants, Mr. Lockard would like the County Commissioners to be involved in all of the covenants that are written. I know there is some question from a legal aspect as to whether that can be done or not, but we also understand that the developer is not the property owner at this point, so the covenants they become more difficult because of that. Hopefully, we can find a way to work that out. As the attorney said, if it gets extended that's fine. Whatever works that out. Bottom line for Westside Improvement is that we recognize this developer is one of our premier home builders in the area. The Westside Improvement Association is really quite pleased to be able to work with them, appreciate the meetings we've had, and we're very supportive of this project. In fact, assuming and if the project gets approved in the next few months or whenever it does get approved, we certainly wish the developer the most success in this project. So, thank you. Any questions, I'll gladly try to answer them.

President Musgrave: I don't have a question, but in regards to the parking issue, I would like you, as the neighbors, to come back, in conjunction with the new property owner, when he becomes that, to tell us which side of the road should have parking and which side shouldn't.

Fred Padget: Okay, we will do that. Mike indicated what he thought in his e-mail, but we will do that, yeah.

President Musgrave: Yeah, okay. At this time I want to go ahead and make this e-mail part of the official record for this. Do you have a copy? Great. Mr. Ziemer?

Ted C. Ziemer, Jr.: I have a question. I have reviewed the proposed covenants, or two separate covenants, one running in favor of the county for the making of the improvements to Jobes Lane to 24 feet. The other running in favor of people within one mile of the proposed project, and that only has one, other than enforcement provisions, it only has one covenant which is that it will be used for single family dwellings, duplexes and condominium units, and shall not be used for apartments.

Fred Padget: Right.

Ted C. Ziemer, Jr.: So, none of the other, well, I think maybe minor things you mentioned are specified in the covenant.

Fred Padget: Right.

Ted C. Ziemer, Jr.: If that's satisfactory with the neighbors based on the verbal representations, then that's satisfactory to the Commissioners.

Fred Padget: That's satisfactory with us. I can't speak for all the neighbors, because we haven't talked about that specifically, but from Westside Improvement's standpoint, that's acceptable to us.

President Musgrave: Alright. Are there any other remonstrators? Would you like to sum up, Ms. Lockyear? I'm sorry, Mr. Nix, has a question.

Commissioner Nix: I do have a question, or a couple of questions, I guess. Is it the understanding that the county will maintain this road? I mean, is this all going to be

private from now on out? Or, are we looking at the county...I mean, I guess, that's my—

Ted C. Ziemer, Jr.: John, is this an accepted county road, Jobes Lane?

Commissioner Nix: Well, I guess, my question is, I understand that, but at some point, if this is brought up to standards, then we need to go through the whole process that we normally do? Year inspections, and, you know, then the county would oversee the construction of this?

Dan Buck: My name is Dan Buck, I'm the developer. Yes, it's our intent to build the Jobes Lane improvements to county specifications—

Commissioner Nix: Okay.

Dan Buck: —so, it can be maintained by the county.

Commissioner Nix: Okay.

Dan Buck: Anything inside the subdivision then will be private. Still be built to county specs, as far as thicknesses of asphalt and gravel and things like that.

Commissioner Nix: Okay. The property is within Jobes Lane, so easements and that aren't necessarily a problem in access then?

Dan Buck: Not that we know of today. The roadway is pretty much within the property that I'm buying.

Commissioner Nix: Okay. I'm just curious, you would be willing to work with them on parking on one side or the other?

Dan Buck: Well, in reality, the improvements that I would put on Jobes Lane, I would say there would be no parking on that improvement. That is what I would recommend. Because there will be parking within my whole project. So, there shouldn't be any parking at all from my project out onto Jobes Lane.

Commissioner Nix: So, we could make it just no parking altogether then?

Dan Buck: As far as my improved area. If that's okay with the neighbors. Maybe the neighbors want to be able to park some vehicles along Jobes Lane, I'm not sure. But, I'm not against—

Commissioner Nix: That's something you all can work out.

Dan Buck: Right, yeah, I'm not against parking on one side or no parking.

Commissioner Tornatta: I would rather it be no parking, but I think, Fred, if you could talk with the neighbors and see, I'm not as familiar with what parking needs they would have to have on that street.

Fred Padget: We'll follow up with the neighbors on that. But, there's two parts of Jobes Lane, one part as you get closer to Middle Mount Vernon, and I don't know for a fact, but I think that meets county standards now, or close to it anyway. That's where the parking on both sides of the road is taking place. The part that Mr. Buck

is talking about is further north on Jobes Lane, and it is a very narrow area, and, of course, that's what he's talking about bringing up to standard. I don't think there's any question about that as to whether there would be parking or no parking, I think that could go either way, because there's not too many along there. It's when you get down below that, closer to Middle Mount Vernon, there's people who live on both sides of the road.

Commissioner Tornatta: Right.

Fred Padget: They have driveways, if they have a family in or something like that, they don't have room for everybody to park.

Commissioner Tornatta: We're just talking about the improvements side.

Fred Padget: No, what I was talking about was the portion that is already there that, I think meets county standards or comes close to it. I wasn't talking about the unimproved area.

Commissioner Nix: I think there's a pointer in there.

Dan Buck: I think there may be a little difference here. This right here, until this intersection is 29 foot wide. I think that's maybe what they would like to see parking just on one side.

Commissioner Nix: Okay.

Dan Buck: I'll have to improve from this intersection going north is only 12 feet wide. So, I'll have to improve this intersection from here to probably about back into here is where I go into my subdivision.

President Musgrave: Commissioner Nix and Mr. Ziemer, I just want to make sure that the covenant needs to or should incorporate the issues that he was raising with regard to the road and so forth. Is that appropriately part of that covenant?

Ted C. Ziemer, Jr.: Certainly it is, if that is required by the Commissioners to induce them to pass this.

Krista Lockyear: I'm not sure what, what question are we?

Ted C. Ziemer, Jr.: Well, for example, and some of this, Krista, I mean, we have talked about it before, and you did generously provide me with a copy of the proposed covenant, and John Stoll has reviewed it. For example, it provides for the improvement of Jobes Lane to a minimum width of 24 feet, it really doesn't say to meet county standards. It says to be coordinated with the Vanderburgh County Engineer. So, I think I'm going to ask you to amend that to say that it will be built in accordance with county standards for the construction of roads, and then also to coordinate the construction with the Vanderburgh County Engineer.

Krista Lockyear: Certainly.

Ted C. Ziemer, Jr.: I know that's an easy enough thing for you to do.

Krista Lockyear: Which will, and have to be agreed upon at site review, etcetera, etcetera.

Ted C. Ziemer, Jr.: Right. Secondly, we're talking about parking, if the Commissioners are suggesting that we incorporate into the covenant where you're going to park on this side or that side, or whatever, if that's something you can do.

Krista Lockyear: Well, again, from Dan's property line, I think his preference is that moving forward the improvements that he's doing he would prefer to not have any parking on either side of the road. As you can see, there aren't any people living on either side of that road. So, there really shouldn't be the need to have parking on either side. As far as further south on Jobes, they're not sure that we really have any say so.

President Musgrave: (Inaudible. Microphone not on.)

Ted C. Ziemer, Jr.: So, Commissioner Musgrave is suggesting that for the portion of Jobes Lane that's going to be improved by your client, that we provide that there would be no parking on either side.

Krista Lockyear: I think that would be actually ideal from my client's point of view. He would rather not have the parking.

Ted C. Ziemer, Jr.: Well, that will be more palatable to the neighbors and the Commissioners and to your client.

Krista Lockyear: We'll add that to the covenant.

President Musgrave: Is that it?

Ted C. Ziemer, Jr.: The only other thing that I want to mention, I did hear in the course of the comments by the neighborhood association, two or three other comments where it was stated that they were verbally satisfied. It doesn't make any difference to me, or I would think the Commissioners, we just want to know that the neighbors are satisfied. So, if it should be incorporated into the covenant, I'll leave that to your discretion.

Krista Lockyear: That's fine. Just to address that a little. They were a little difficult to pinpoint, and at the meeting we had at Red Bank Library, we talked about in writing, and it's the commitment that it will not be apartments, and it was very important that it be in writing and binding and run with the land and affect any future landowner. The other things like road closures and things like that is kind of difficult to put into a written document, and I believe, and I will confirm again through Mr. Padgett and Mr. Lockard that Dan's commitments to, hey, I'll send you out a notice a couple of days in advance if there will be any road closing during this construction is probably acceptable. If it's not and we can do more, we'll do more.

Ted C. Ziemer, Jr.: It's just that if the Commissioners defer this for 30 days, which as County Attorney we do recommend, then when this is heard again in 30 days, if some neighbors come in and say, well, we don't see this in writing, that will be a problem.

Krista Lockyear: Understood.

President Musgrave: Alright, if you can put those little things in writing I think that settles it for all time, and work out some language that works for you and for them. Alright, Commissioners, is there a motion to defer this for another 30 days?

Commissioner Tornatta: So moved.

Commissioner Nix: Second.

President Musgrave: All those in favor?

Ted C. Ziemer, Jr.: Excuse me, well, should we say to what meeting date?

President Musgrave: Okay.

Ted C. Ziemer, Jr.: That's what I would prefer.

President Musgrave: Does anybody—

Bev Behme: It's July 17<sup>th</sup>.

President Musgrave: July 17 is our next—

Commissioner Tornatta: Motion to defer this issue until July 17<sup>th</sup>.

Commissioner Nix: I second that.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. Thank you, we'll see you again in a month.

Krista Lockyear: Thank you very much. We'll get that covenant revised to the County Attorney well in advance of the meeting then. Thank you.

President Musgrave: Alright. Ms. Behme?

**Final Reading: VC-10-2007  
Petitioner: Dauby Properties Investments, LLC  
Address: 7445 N. Green River Road  
Request: Change from AG to C-4  
Action: Approved 3-0**

**Final Reading: VC-11-2007  
Petitioner: Dauby Properties, LLC  
Address: 7445 N. Green River Road  
Request: Change from AG to R-3  
Action: Approved 3-0**

Bev Behme: VC-10 and VC-11 are merged together in one comment, but they will need two separate votes. VC-10-2007 rezoned 5.94 acres from agricultural to C-4. That addresses 7445 North Green River Road. VC-11-2007 is the adjoining 14.77 acres from agricultural to R-3. Dauby Properties and Investments, LLC is requesting two changes to the zoning of the 20 acre site located at 7445 North Green River Road. VC-10-2007 is a request to rezone a five acre parcel along the Green River Road frontage of the site to C-4 for general commercial development. VC-11-2007 is a request to rezone the remaining 15 acres of the parent site immediately east of

the proposed C-4 site to R-3 for residential condominiums. The proposed R-3 lot includes 50 feet of frontage along Green River Road, and a 50 foot strip along the north property line. The 20 acre site is located on the east side of Green River Road between Heckel and Millersburg Road. Access to the site will be determined by site review at the time of submission of plans for the development of the site. Evansville MPO has indicated that the current plans for Green River Road widening project at this location indicates the installation of a center, two way left turn lane, but additional auxiliary lanes, such as right turn decel lane will likely be warranted if this site is to develop as high density residential and commercial. County Engineer, John Stoll states that;

“Additional right-of-way will have to be acquired for the proposed C-4 property in order to construct the Green River Road widening project. The access to both sites should be limited to one shared drive that serves both the proposed C-4 and the proposed R-3 residential land immediately east of the C-4 site.”

This site is located along the North Green River Road corridor, northeast of the Goebel Soccer Complex development. Public sewers have recently been extended to the area, and the county has future plans for widening of Green River Road at this location. The comprehensive plan future land use map has not yet been updated to reflect these improvements, which make future development of the area more likely to occur. The two petitions require separate votes, and VC-10-2007 is the first vote. Area Plan Commission voted on June 14, 2007 with nine yes and one abstention on both petitions.

President Musgrave: Thank you, Ma'am. Welcome.

Shannon Frank: Good afternoon. Shannon Frank here on behalf of the petitioner, Dauby Properties. The principal, Ron Dauby, who is a builder and developer for several decades is also here with me. He is the developer of this project. We're first going to address the tract before the Commission which is the five acres located on the North Green River Road property. As noted in the staff report, it's about a half mile north of the Goebel Soccer Complex. The surrounding area, as you can see by the map, is the majority of it is agricultural, although there is some residential within about a half mile of the proposed tract to be rezoned, as well as property located a mile to two miles south is commercial, that's the Lynch Road, and commercial development is creeping further north past Lynch Road, which we certainly anticipate with the Green River Road being widened in the near future. As noted in the staff report, it's anticipated that as part of the Green River Road widening, there will be a two way left turn lane as part of the widening project. My client does understand that access may be limited to this property while the widening project is going on. I did want to make note of that, because the Area Plan Commission did bring that up last week. We do understand as well, as noted by the Area Plan Commission, and the staff report that these two parcels will share one drive. My client is acceptable to that shared drive as well. We did want to clarify that the petition does note, as did the staff report, that sewer has been extended to that site, and we want to correct that. Sewer has been extended to Millersburg Road, which is directly north of the site, but my client will run the sewer from Millersburg Road to the site. So, we just wanted to make sure that was clarified from what is set forth in the staff report. As noted in the county's comprehensive plan, it has not been updated to reflect the widening of Green River Road, so, there, at the current time the plan does not show commercial or residential development, but as noted, just south of Lynch Road commercial development is moving north. It's coming from

the west of this parcel as well. So, we believe that commercial development, as well as residential development would be a good use for this property, and is actually going to be needed for this area as the county and people tend to move that area and along the Green River Road corridor. With me is my client, Ron Dauby, we can answer questions, as well as we have Keith Poff with Sitecon, who is the engineer for the project to answer any questions you might have.

President Musgrave: Thank you. I know Commissioner Nix has some questions, but let me first call for any remonstrators on this? I see no one. So, Commissioner Nix?

Commissioner Nix: I'm just curious, you had mentioned, I guess, sewer. Sanitary and storm or both from Millersburg down? Which way are you coming with that? I guess, Mr. Poff could answer that.

Keith Poff: Keith Poff with Sitecon. Yes, we're anticipating that we're going to have to connect at the Millersburg lift station, which is northwest of our property. We anticipate a lift station in order to push the sanitary—

Commissioner Nix: What's the route of your line, I guess, is the question I'm asking?

Keith Poff: It hasn't been confirmed. We're expecting to be able to push up to Millersburg and across Millersburg over to the lift station.

Commissioner Nix: But, I mean, will it be along Green River?

Keith Poff: North along Green River to Millersburg, and then west along Millersburg.

Commissioner Nix: Okay, is, does that fall within the construction limits of the Green River project itself? The widening project?

Keith Poff: We'll have to negotiate those areas.

Commissioner Nix: Has that been worked out?

Keith Poff: No, we still have to coordinate with the utility department.

Commissioner Nix: Okay. You know, this project is going to move ahead fairly quick, what are you looking at here as far as a time frame?

Keith Poff: Immediate planning.

Commissioner Nix: Okay, but you, you will coordinate with the County Engineer and the utilities, so that we don't have any conflicts with the Green River Road widening then? I mean, I know you're aware that we're going to do this.

Keith Poff: You're ahead of us.

Commissioner Nix: Pardon me?

Keith Poff: You're ahead of us.

Commissioner Nix: Okay, but, once again, you're going to push it all?

Keith Poff: That's what we expect to do.



Commissioner Nix: Okay.

Keith Poff: We would have to get cooperation with several west land owners to explore a gravity situation, that's probably not feasible.

Commissioner Nix: I was going to say pushing's not very good for gravity anyway, but, once again, once again, you will work with the utilities and the County Engineer on this line, so that we don't have any problems with the Green River Road project as part of this?

Keith Poff: Yes, we will.

Commissioner Nix: Okay, and you've got a plan somewhat in place to do that? Or, you're in the process of doing that?

Keith Poff: I'm afraid we're going to have to essentially negotiate for our own path away from your street construction.

Commissioner Nix: Okay, okay. That could be across private property and what have you then?

Keith Poff: Most likely, yes.

Commissioner Nix: Okay, okay, because I've got a feeling they're not going to let you push it. I mean, I don't know, I might be wrong.

Keith Poff: You're talking about open cutting versus—

Commissioner Nix: Yeah.

Keith Poff: When I say pushing we're going to be installing a lift station in order to have a force main to take our sewage across the site.

Commissioner Nix: Okay, so, it's a force then?

Keith Poff: It is a force main.

Commissioner Nix: Okay, okay.

Keith Poff: We will have a gravity collection on our site. More than likely that system will be available for a little bit more of the hill that's north of us, and then we'll have a force main leave our site and connect to the Millersburg lift station.

Commissioner Nix: I guess, my point is that we just don't want to give something, we don't want to approve anything today that's going to cause us a problem when we get Green River Road going, because that's going to be, there's going to be a lot of work that's going to be done in that area there.

Keith Poff: We've already been advised by the utility department that they have some interest in how we're going to plan the water. They have some desires to work with us for the water relocation. So, we will be in contact with them.

Commissioner Nix: Has there been any interest, I'm just curious, this is off the subject a little bit, but for that line to run any further south at all?

Keith Poff: If you'll notice, there's one exhibit here that shows the area with a flood plain land on it?

Commissioner Nix: Yeah.

Keith Poff: We are effectively at the end of the reasonably developable area that's on the ridge. You can see that there's a cross hatch area that goes completely around our property, as well as the ridge, that's almost the last edge of developable property relative to the ditch.

Commissioner Nix: Until you get on the other side of the creek, which is probably low anyway.

Keith Poff: South of there is even lower yet.

Commissioner Nix: There's some concern there because with that project, a lot of the homes on the south side of the creek are still on a field bed septic. But, I mean, that's another whole issue.

Keith Poff: Yeah, we're actually on the north side of Schlensker.

Commissioner Nix: Oh, yeah, I know, I understand.

Keith Poff: We're on the other side.

Commissioner Nix: Okay.

President Musgrave: I've heard you say that you have touched base with the Water Department several times. I would appreciate it if you would touch base with John Stoll and bring him up to speed on this whole sewer project. I know that there are some other folks further south there who are talking about sewers, and they've had numerous conversations with Mr. Stoll to make sure that everyone knows everything there is to know about the road widening work and when to run pipes and that sort of thing.

Commissioner Nix: Just an FYI, and I don't know how up to speed you are on the Green River Road project, but we looked at doing a rough in across, underneath Green River for future sewer for all those homes on the south side of the creek. I didn't know if—

Keith Poff: The utility department advised me, because we asked about taking our site across the ditch into the sewer that was built for the soccer complex. We were told that the ditch is the dividing line, Schlensker Ditch. Everything north of Schlensker Ditch has to go to Millersburg, we don't have a choice. We cannot go across the ditch—

Commissioner Nix: Okay.

Keith Poff: —into the area south of the ditch. So, everything south of Schlensker Ditch has to go to the Keystone area back.

Commissioner Nix: Yeah, because there is a lift station across, is it Heckel? Heckel Road?

Keith Poff: Yeah, Keystone seven. That limitation is Schlensker Ditch. Nothing north of the ditch is supposed to go that way. We tried to go that way. It's a shorter run, and they said no.

President Musgrave: Anything further? I already called for remonstrators, oh, I'm sorry, sir,

Craig Kendall: Oh, that's alright.

President Musgrave: You have to come forward to the microphone, state your name and address, and let us know what your concerns are.

Craig Kendall: I'm Craig Kendall. I live at 5621 Winthrop Court. We own the property just to the south, and really just came here to get educated. Now that I've gotten educated, I've got some questions, I guess. First of all, I guess, that's the driveway to the north? On your property? Is that your entryway?

Unidentified: Probably not.

Craig Kendall: Probably not?

Unidentified: (Inaudible. Not at microphone.)

Craig Kendall: Okay.

Unidentified: (Inaudible) in the middle of our property.

Craig Kendall: Okay, I just wanted...the tract that we received the drawing that you had previous to that.

President Musgrave: Would you give him the pointer?

Bev Behme: I can actually explain that.

President Musgrave: Okay, thank you.

Craig Kendall: If you don't mind.

Bev Behme: That's—

President Musgrave: Be sure you use the microphone, Ms. Behme.

Bev Behme: —no, the other one. Yeah. The way that is shown there, that's their required frontage. That's not the access. That will be decided at site review. But, the way that looks right there with, like a flag lot right there, that's their required frontage for their residential in the back. That doesn't indicate access.

Craig Kendall: Again, I agree with you all, from what I understand with the people to the south that they would much rather it go to the south. Of course, we would rather go to the south too. We haven't looked into the cost or anything like that, but if, it sounds like, you know, there's not communication between everybody as to what needs to be done. Because I know the people on the southeast corner of Heckel Road were real upset with Keystone getting the lift station and then not being

included in on it. So, if it's more feasible to go south, I would think now would be the time to do it, not later. That's really all.

President Musgrave: You're saying that if that goes south, you would be more interested in it?

Craig Kendall: Yeah, I—

President Musgrave: But, he testified that he cannot run it south.

Craig Kendall: Well, because of the—

President Musgrave: He's been told to go north.

Craig Kendall: Yeah, what the people had said. It sounded like the utilities says one thing and the sewer department says another.

President Musgrave: No, they're saying the same thing. You've got to go north with it.

Craig Kendall: Oh, okay.

President Musgrave: So, maybe you need to work out a deal with him where you can hook on to what he's doing.

Craig Kendall: That's fine. It just sounded to me that what you were saying that he had checked with one group about going to the south, and then the other one was, you know, to push the sewage to the north would seem kind of silly if it's already got the lift station. Thank you.

Commissioner Nix: Thank you.

President Musgrave: Are there any other remonstrators? Would you like to respond and sum up?

Shannon Frank: I did want to confirm that the little small, 50 foot parcel is because of the road frontage required for the residential, and that it is my client's intention to run the drive to the residential across the commercial property.

President Musgrave: Is there any questions? Is there a motion?

Commissioner Tornatta: Motion to approve.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. Do I need to do a roll call vote?  
Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And I vote yes.

Shannon Frank: Alright.

President Musgrave: Thank you, Ms. Frank.

Shannon Frank: Then we have the second parcel.

President Musgrave: Alright, same issue, except it's commercial.

Bev Behme: There's two—

Shannon Frank: The second parcel is the 15 acre parcel that we're asking to go from an agricultural zoning to an R-3 zoning. Rather than take up your time, I will confirm the statements I made previously with respect to the commercial rezoning application.

President Musgrave: Let's go ahead, and—

Commissioner Tornatta: We can do this.

President Musgrave: Alright. Are there any remonstrators for the residential portion? Alright. Commissioners, any questions? Any further comments? Is there a motion?

Commissioner Tornatta: Motion to take from residential to commercial.

Commissioner Nix: Second.

President Musgrave: I think it was from agricultural to residential.

Commissioner Nix: Agricultural—

Shannon Frank: Yes, agricultural to an R-3.

Commissioner Tornatta: Okay, wrong one there. Okay, motion to change from agricultural zone to an R-3 zone.

Commissioner Nix: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: The motion carries. Thank you, Ms. Behme.

Shannon Frank: Thank you.

Commissioner Tornatta: Roll call?

President Musgrave: I'm sorry. Commissioner Nix?

Commissioner Nix: Yes.

President Musgrave: Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Musgrave: And, I vote yes as well. Do we have another one, Ms. Behme?

Bev Behme: No, that's it.

President Musgrave: Is there a motion to....any other business? Motion to adjourn?

Commissioner Nix: Second, or first, or yes. One of those.

Commissioner Tornatta: Second.

President Musgrave: All those in favor?

All Commissioners: Aye.

President Musgrave: Thank you everyone for your patience this evening.

(The meeting was adjourned at 5:00 p.m.)

**Those in Attendance:**

Cheryl Musgrave	Bill Nix	Troy Tornatta
Ted C. Ziemer, Jr.	Madelyn Grayson	Bev Behme
Krista Lockyear	Dan Buck	Fred Padget
Shannon Frank	Keith Poff	Craig Kendall
Others Unidentified	Members of Media	

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Cheryl A.W. Musgrave, President**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDERBURGH COUNTY  
REZONING BOARD  
JULY 17, 2007**

The Vanderburgh County Rezoning Board met in session this 17<sup>th</sup> day of July, 2007 at 3:30 p.m. in room 301 of the Civic Center Complex with Vice President Bill Nix presiding.

**Call to Order**

Commissioner Nix: Good afternoon. I would like to call to order the Vanderburgh County Commissioners special called meeting for, I guess, to approve some zonings.

**Approval of June 19, 2007 Rezoning Meeting Minutes**

Commissioner Nix: I will entertain a motion to approve the minutes of the June 19, 2007 meeting.

Commissioner Tornatta: So moved.

Commissioner Nix: All in favor?

Commissioner Tornatta: Aye.

Commissioner Nix: Aye.

**First Readings: VC-13-2007: Petitioner: Three I Properties, LLC  
Address: 601 and 630 E. Boonville-New Harmony Road  
12900 & 12920 Old State Road  
Request: Change from AG and R-1 to C-4**

**VC-14-2007: Petitioner: Kendall Development, LLC  
Address: 7235 N. Green River Road  
Request: Change from AG to C-4**

Commissioner Nix: Good afternoon.

Bev Behme: Good afternoon. We have two first readings on the agenda, VC-13-2007, Three I Properties, LLC. That's at 12900 and 12920 Old State Road, from agricultural and R-1 to C-4. VC-14-2007, Kendall Development, LLC, 7235 North Green River Road, from agricultural to C-4. Those are first readings. They need to be voted and sent to Plan Commission.

Commissioner Tornatta: Motion to accept.

Commissioner Nix: Second. All in favor? We'll have a roll call vote. Commissioner Tornatta?

Commissioner Tornatta: Aye.

Commissioner Nix: And I vote yes.

**Final Readings: VC-4-2007: Petitioner: Sterling Properties, LLC  
Address: 7800 Morgan Avenue  
Request: Change from AG to M2 with UDC  
Action: Approved 2-0**

Bev Behme: Now, there were three final readings on the agenda, two have been continued, VC-9-2007 and VC-12-2007 have been continued until the August 21<sup>st</sup> meeting. So, we only have one first reading, and that's VC-4-2007, Sterling Properties.

Commissioner Nix: Excuse me, that's second reading, is that correct?

Bev Behme: I'm sorry. Final reading, yes, yes.

Commissioner Nix: Okay, final.

Maria Worthington: Good afternoon, Commissioners. For the record, I am Maria Worthington with Kahn Dees Donovan and Kahn law firm, 501 Main Street, Evansville, Indiana, 47708. This afternoon we're here to ask for your positive vote on the Ag to M2 with extensive use and development commitment for Sterling Properties, LLC for new headquarters for Sterling Boiler and Mechanical, Inc. I believe, as you know, from the past televised proceedings of the Area Plan Commission, we did receive a 10-0 positive recommendation in favor of this zoning. We believe we have satisfied all concerns of the neighbors. We've worked extensively with our neighbors and with government officials to come up with a project that we think would suit everyone. Steve Bohleber, the neighbors and remonstrators, they're not now remonstrators, they once were, their attorney has submitted a letter that he wanted me to read into the record. He will not be attending. They are now in agreement with this project, and I've handed that letter out to you, and he ask that I make it part of the record. I'll very quickly read the couple of paragraphs that it is:

"Dear Commissioners Nix and Tornatta, I am unable to attend the County Commissioners meeting on July 17, 2007, but ask that this letter be made a part of the record and read into the record by petitioners attorney, Maria Worthington. I represent several neighbors with diverse interests who live around the area of the proposed rezoning. While not every neighbor is happy with every aspect of the proposal before you today, and while most would probably prefer this area remain green and open, the use and development commitment and rezoning petition before you is the product of lengthy and productive negotiation and compromise. In addition, Sterling has committed itself to extend its' sewer line to accommodate adjoining residential property owners. Because of the positive relationship developed between the parties during this negotiation process, my clients interpose no objection to this project."

Much of the use and development commitment before you contains language proposed by their attorney. We believe everybody's satisfied with that. We don't want to be redundant. We want you to know that we are here to answer your questions. We hope that we've satisfied all concerns. I will state that I do believe Jim Farney's on his way, if you have engineering questions. Mike Shoulders, our architect, is here. I'm here. Mike Schopmeyer is here, and we have folks from



Sterling here. So, we ask for your positive vote. If you have any questions, we would like to answer them.

Commissioner Nix: Okay. Thank you. Are there any remonstrators for VC-4-2007? Seeing none. Questions from the Commission?

Commissioner Tornatta: No, I would just like to make a comment. I know that this has been a lengthy process to try and get everybody on board. I appreciate the job that the people from Sterling have done to try and make sure that this is going to be a very positive situation. They've taken care of all the questions that I've had and that some of the neighbors have called and had me out. So, I much appreciate it, and I would like to call for the vote.

Commissioner Nix: Would you like a summation at all?

Maria Worthington: I don't believe we have anything further. We very much appreciate you having us today. We know it was a short and tight agenda. So, we just ask for your positive vote.

Commissioner Nix: I will entertain a motion.

Commissioner Tornatta: So moved.

Commissioner Nix: Second. All in favor?

Commissioner Tornatta: Aye.

Commissioner Nix: Aye. Opposed same side.

Ted C. Ziemer, Jr.: In my opinion, everything that's happened so far is okay.

Commissioner Nix: Yes. Roll call vote please. Troy, Commissioner Tornatta?

Commissioner Tornatta: Yes.

Commissioner Nix: And, I vote yes.

Maria Worthington: Thank you very much.

Commissioner Nix: If there's no other business to come before the board, I will entertain a motion to adjourn.

Commissioner Tornatta: So moved.

Commissioner Nix: Second. All in favor?

Commissioner Tornatta: Aye.

Commissioner Nix: Aye.

(The meeting was adjourned at 3:36 p.m.)

**Those in Attendance:**

Bill Nix	Troy Tornatta
Madelyn Grayson	Bev Behme
Others Unidentified	Members of Media

Ted C. Ziemer, Jr.  
Maria Worthington

**VANDEBURGH COUNTY  
REZONING BOARD**

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**Bill Nix, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
AUGUST 21, 2007**

The Vanderburgh County Rezoning Board met in session this 21<sup>st</sup> day of August, 2007 at 3:50 p.m. in room 301 of the Civic Center Complex with President Bill Nix presiding.

**Call to Order**

President Nix: Good afternoon. We'll start the Vanderburgh County Commissioners APC, or actually approve the rezonings.

**Approval of the July 17, 2007 Rezoning Meeting Minutes**

President Nix: I will entertain a motion to approve the rezoning minutes.

Commissioner Tornatta: So moved.

President Nix: Second. All in favor?

Commissioner Tornatta: Aye.

President Nix: Aye.

**First Readings: VC-15-2007: Petitioner: Habermel Investments, LLC  
Address: 12700 Old State Road  
Request: Change From Ag to CO-2**

**VC-16-2007: Petitioner: Randall Johnston  
Address: behind 7801 Old State Road  
Request: Change from Ag to R-3**

**Final Reading: VC-12-2007: 4401 Hogue Road (Continued till 9/18/07)**

Bev Behme: We have two first readings, VC-15-2007, Habermel Investments LLC, 12700 Old State Road, change from agricultural to CO-2. First reading for VC-16-2007, petitioner, Randall Johnston, change from agricultural to R-3, and that's behind 7801 Old State Road. Excuse me. On final reading we have a continuation of VC-12-2007, 4401 Hogue Road, continued until September 18<sup>th</sup>, at the request of the petitioner. There's one final reading, VC-9-2007, Level Development LLC, 701 Jobe's Lane.

President Nix: Okay, I'll entertain a motion to approve, I guess, the first two?

Bev Behme: The first two.

President Nix: Yeah, on first reading.

Commissioner Tornatta: So moved.

President Nix: Second. All in favor?

Commissioner Tornatta: Aye.

President Nix: Aye. Do we need a roll call on that? I don't believe we do. Okay.

Ted C. Ziemer, Jr.: No.

President Nix: Thank you.

**Final Reading: VC-9-2007: Petitioner: Level Development LLC  
Address: 701 Jobe's Lane  
Request: Change from Ag to R-3  
Action: Approved 2-0**

Krista Lockyear: Good afternoon, Commissioners. My name is Krista Lockyear, Rudolph, Fine, Porter and Johnson. I'm here this afternoon on behalf of Level Development LLC, the petitioner for this rezoning on Jobe's Lane. If you may recall two months ago on June 19<sup>th</sup> we were in front of you. In keeping with the brevity of this meeting this afternoon, I would like to just incorporate my comments from that meeting into the record, so, that you don't have to hear me go on and on. I will remind you that this is a proposed condominium development by Dan Buck. We'll have condominiums in this area with two target, two price targets, \$175,000 to the \$250,000 range, and the \$115,000 to \$165,000 range. When we met at the June hearing, we requested that you refrain from voting on the rezoning in order to allow the private covenants that the landowner, current owner was going to make. They wanted to be sure that the sale was going to go forward to Dan Buck before they bound the real estate in such a manner that's really particular for his development. We have received enough assurances that the sale is going to go forward. We've got the authority now from the landowner to record these covenants upon your approval of the rezoning, and, therefore, we request that you do approve this rezoning this afternoon. I would also like to comment that we really appreciate the efforts of the Westside Improvement Association, as well as Michael Lockard, who is an adjacent landowner, and his father, in working with us to get through any issues that we may have, as well as your counsel, Mr. Ziemer.

President Nix: Anything else at this time?

Krista Lockyear: It's up to you.

President Nix: Thanks. No pressure, huh? Are there any remonstrators?

Fred Padget: Good afternoon, Commission.

President Nix: Mr. Padget.

Fred Padget: I'm Fred Padget representing the Westside Improvement Association. This has gone on for a couple of months, but I do want to make comment on a couple of things. The developer and the attorney have met with the neighbors on a couple of occasions and individually with several of them several different times. In my opinion, the developer has addressed all of the issues that had been brought up in those conversations and they reduced it to a couple of covenants of which you have copies. We don't need to go into those, unless you want us to. I believe you also have an e-mail from Mike Lockard who is chairman of the Westside Improvement Land Use Committee, supporting the project. I'm just here to reinforce that. I would like to in particular say that the developer and the attorney have been excellent to work with on this project. With that said, the Westside Improvement

does support the project, and we wish the developer great success with it. Thank you. Any questions, we'll gladly answer them.

President Nix: Mr. Padget, I guess, one question I have is, I had received an e-mail earlier today from Mr. Lockard, apparently he wasn't able to attend today.

Fred Padget: Right.

President Nix: About parking on Jobe's Lane. Have those issues been addressed?

Fred Padget: Not, we haven't, I haven't really talked with him too much about it. Jobe's Lane on the one side, on the east side there's a curb, on the west side there's no curb, and I think, personally, Mike might disagree with me, but personally I think that should be a separate issue from the rezoning. It's really nothing to do with the developer.

President Nix: Okay, and that was, he alluded to that in the e-mail that it's something that we could possibly work out with the County Engineer at some time down the road to address no parking along there. The impression I got from the e-mail was that he wasn't necessarily, that wasn't necessarily a show stopper.

Fred Padget: No, that's exactly right. It's not a show stopper.

President Nix: Okay.

Fred Padget: We're, at least I'm a little confused as to where the city line runs along there also. But, that may be another story, so, but I think that issue can be addressed later and separately.

President Nix: Is there a way we could layer the map there and tell that now? Do you have a layer that will do that?

Janet Greenwell: This is a Power Point presentation.

President Nix: Oh, okay. So, you're not live then?

Janet Greenwell: No.

President Nix: That's fine. We can address that at a later date. Okay. Questions?

Commissioner Tornatta: I would just like to make a statement that it's kind of nice when two groups get all their problems worked out before. It seems like we've been able to do that with Westside Improvement and the neighbors and the developer. So, it does make it extra nice.

Fred Padget: Sometimes it seems like it's a rare occasion, but, actually there's not very many projects in the last six or seven years that I've been involved, I think we've only really dug our feet in on four or five. Other than that, why, you know, we recognize the need for good, sound economic development, and sometimes we disagree with where it's happening, but we recognize the need for it. In this project, in, I think, collectively, Mike's opinion and my opinion, will be an excellent project. It's probably the best kind of a project that could happen for that particular property. Thank you.

Commissioner Tornatta: Thanks for your effort and for the Westside Improvement.

Krista Lockyear: I would just like to make one point of clarification, because I did speak with Mike today about that Jobe's Lane. The developer has committed to no parking on Jobe's Lane on the portion that he will be improving and re-creating. So, I think the request that the parking be limited to one side of Jobe's Lane is really independent, and Mike had just asked that we could pursue that in the future. I'm sure that Dan would support shutting down one side or the other of Jobe's Lane from parking.

President Nix: Okay, thank you. Are there any other remonstrators? If not, any questions from the Commission? Ms. Lockyear, would you like to do a summation? Or are you comfortable to go with this?

Krista Lockyear: You can go right ahead.

President Nix: Okay. I'll entertain a motion.

Commissioner Tornatta: Motion to approve.

President Nix: Second. All in favor?

Commissioner Tornatta: Aye.

President Nix: Aye. Roll call vote. Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: And I vote yes. Congratulations. Good luck on your project.

<b>Proclamation for Beverly Behme</b>
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President Nix: Before everyone leaves, I would like to get your attention for just a minute. Ms. Behme?

Bev Behme: Yes?

President Nix: If you could step up to the podium. You knew we weren't going to let you out of here without doing this.

Bev Behme: No, I didn't know.

President Nix: First of all, I would like to say the two hats that I wear you've been great to work with on both sides of the fence. I appreciate your time and effort, everything you've done for the county and for this community, working with these people on a day in and day out basis. I know there's times when I come in your office down there, you all have got a lot going on, but you always seem like you've got time to work with the developers, the people. We need more people like you working for the county.

Bev Behme: Thank you very much.

President Nix: We've got a little proclamation. Commissioner Tornatta?

Bev Behme: Oh, my.

Commissioner Tornatta: This is your last meeting, by the way—

Bev Behme: Yes, it is.

Commissioner Tornatta: —that’s why we’re doing this.

President Nix: Unless you want to stay on for a few more, Bev?

Bev Behme: No, I don’t think so. I think 27 years is long enough, but thank you.

Commissioner Tornatta: Well, we might have that wrong here.

Bev Behme: That’s okay.

Commissioner Tornatta: Okay. Okay. The proclamation from Vanderburgh County:

“Whereas, Beverly Behme has been employed with Vanderburgh County since January, 1981—

Bev Behme: That’s correct.

Commissioner Tornatta: You started working at 13, didn’t you?

Bev Behme: Yes, thank you. I worked for the city for a year, so, that’s correct.

Madelyn Grayson: We just focused on the county portion.

Commissioner Tornatta: Okay, good.

Bev Behme: Thank you.

Commissioner Tornatta:

“Whereas, Beverly Behme has served in the Area Plan Commission in the position of Zoning Administrator since April of 1982; and, Whereas, Beverly Behme has always been a consummate professional in assisting the Vanderburgh County Rezoning Board for 25 years in matters pertaining to county rezoning petitions; and, Whereas, Beverly Behme will be retiring on August 31, 2007. Therefore, in honor and recognition of her years of dedicated service, we, the Vanderburgh County Board of Commissioners herewith proclaim, Tuesday, August, 21, 2007 as “Beverly Behme Day” in Vanderburgh County, Indiana.”

Bev Behme: Well, thank you very, very much.

President Nix: Congratulations on your retirement.

Bev Behme: I appreciate it.

President Nix: Don’t be a stranger.

Bev Behme: I won’t. Thank you very much.

President Nix: I'll entertain a motion to adjourn.

Commissioner Tornatta: So moved.

President Nix: Second. All in favor?

Commissioner Tornatta: Aye.

President Nix: Aye.

(The meeting was adjourned at 4:00 p.m.)

**Those in Attendance:**

Bill Nix

Ted. C. Ziemer, Jr.

Fred Padget

Members of Media

Troy Tornatta

Madelyn Grayson

Janet Greenwell

Bev Behme

Krista Lockyear

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Bill Nix, President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)



**VANDERBURGH COUNTY  
REZONING MEETING  
SEPTEMBER 18, 2007**

The Vanderburgh County Rezoning Board met in session this 18<sup>th</sup> day of September, 2007 during the regularly scheduled County Commission meeting in room 301 of the Civic Center Complex with President Bill Nix presiding. The rezoning portion of the meeting began at 4:20 p.m.

**Final Reading: VC-12-2007: Petitioner: DPF, Inc.  
Address: 4401 Hogue Road  
Request: Change from Ag to C-4 with UDC  
Action: Approved 3-0**

Janet Greenwell: Good afternoon. I'm Janet Greenwell with the Area Plan Commission.

President Nix: Good afternoon, Janet.

Commissioner Korb: Hello.

Janet Greenwell: Welcome aboard. We have one zoning for final reading tonight. It's docket number 2007-23-PC VC-12-2007, petitioner, DPF, Inc. DPF, Inc. is requesting a change in zoning from agricultural to C-4 with a use and development commitment. It's a 6.95 acre site located on the north side of Hogue Road. The petition was heard at the July 12, 2007 Area Plan Commission hearing, and was recommended for approval with ten yes votes. This site is immediately north and west of the northern terminus of Rosenberger Avenue. The Evansville MPO has stated that the access to this site should be limited to one shared access that lines up directly with Rosenberger Avenue approach, and has recommended that a traffic impact study be required to determine needed improvements at this intersection, including a traffic signal. The County Engineer, John Stoll, indicated through his comments to Plan Commission that the development of this site will require detailed drainage plans, since the entire site appears to be in the Carpentier Creek flood plain. It's more recently been brought to the attention of the Area Plan Commission that, by the Building Commissioner, that approximately half of the site lies within the Carpentier Creek flood way, and that a determination of the wetlands will have to be accomplished before any tree removal, fill, or any alteration of the natural terrain commences on this site. A flood way permit from DNR and a permit or approval from the Army Corp of Engineers will be required prior to commencement of any activity on the site. The proposed C-4 abuts an area projected as commercial on the future land use map in our comprehensive plan. The lots adjacent north, south and east of commercial development. Residential development is adjacent to the west. This is a request to expand the commercial development west along the north side of Hogue Road to include this 6.95 acre site. The comprehensive plan encourages the use of landscaping and buffers when commercial abuts residential development. The zoning code requires that a minimum ten foot open and unobstructed side yard must be maintained adjacent to that residential, and requires that when a commercial lot abuts a residential lot in the same block frontage the 25 foot grass yard requirement applies to the commercial lot. A use and development commitment is included as part of this rezoning request. The commitment identifies 16 specific uses to be prohibited on this site, and prohibits billboards on this site. A copy of the use and development commitment was included with our staff report. If you have any questions, I would be glad to try to answer them.

President Nix: Questions from the board?

Commissioner Korb: Do we have any clue what's going in there?

Janet Greenwell: Not a clue, sir.

Commissioner Korb: My concern is you go from agricultural to C-4, and C-4's a very broad brush. I mean, that gives the developer any type of ability that he wants to put anything in there. So, I have a concern about that. Number two, don't know that it's true, just wanted to find out, someone has told us, erroneously or not, that the developer has already gone in and started removing some trees. Do we know that to be a fact?

Janet Greenwell: I met with the Building Commission earlier today. The Building Commissioner said they received a complaint two or three weeks ago and sent an inspector out, and that they did stop Mr. David from cutting down trees that were in the flood way.

Commissioner Korb: Okay. Well, I mean, it's kind of been an eyesore for a long time on the west side, I mean, it's kind of our last patch of trees, I guess, but I would prefer to find out what his intentions are for that area. I realize that probably the Corp of Engineers might stop it anyway because it does sit in the flood zone. But, I would feel a lot better, especially for west siders, if we knew what his intentions were, because there is some residential, and there is some concern about that on my end.

Janet Greenwell: I, whatever is your pleasure.

Commissioner Tornatta: We do have a period of—

Janet Greenwell: It's your final vote.

Commissioner Tornatta: —time, and Krista might want to address this, but we do have a period of time which we are still under the 90 day cap before this gets sent back to Area Plan.

Ted C. Ziemer, Jr.: One week.

Commissioner Tornatta: One week? Okay.

Krista Lockyear: If I might, Commissioners, Krista Lockyear, I'm the attorney representing DPF, Inc., and can probably fill in a lot of the gaps, and hopefully answer questions, and, maybe, Commissioner Korb, bring you up to speed, and really the rest of the Commissioners too, because we went to Plan Commission and had this discussion and then some time has passed to allow us to see what we can do to address any issues before we come to you. We're kind of at a point where there's not much more we can do, but let me kind of fill you in. We did file a use and development commitment with this, but your initial question, what is the plan for this property? We don't have an end user for the property at this point. We did do the use and development commitment after talking to Mike Lockard with the Westside Improvement Association about what are the big concerns Westside Improvement Association would have on this property, and most of that stems from its proximity to Carpentier Creek. So, we have limited what Westside Improvement kind of uses the environmentally sensitive type of uses that would be in the C-4. No pest control, no battery type plants, automobile related things that could adversely affect Carpentier Creek in an environmental way.

Commissioner Korb: Does that include—

Ted C. Ziemer, Jr.: No dry cleaning plant.

Commissioner Korb: —yeah, and that includes gas stations, I guess?

Krista Lockyear: I don't have it in front of me. The other things that we did indicate could not go on this property were businesses that we felt would compete in a direct manner with new businesses that have moved into the area, most specifically Bob's Gym. We want to be a good neighbor, don't want to do anything that could hinder or bother their business. So, we come forward, we don't have a particular use for the property, and here's one of the big keys, this land is going to be difficult to develop. We have flood way issues, which means that buildings can't go in a flood way, unless DNR comes in and gives us approval to do so. Flood plain, there has to be fill to get it up, but with the close proximity with the flood way, that's also sensitive, and DNR and our County Surveyor are going to watch that very closely. That really, when you take a step back, although it makes this property difficult to develop, it's a lot more eyes watching this development of the property, because we can't go forward without the DNR permits. With the wetland issue, there may be wetlands on this property, if DNR and the Indiana Department of Environmental Management determine that there are wetlands, of course, we cannot develop that wetlands area. We're talking about a roughly six and a half acre parcel. Looks, from the 2003 maps that Morley generated, that perhaps half of it is in flood way. So, we're only talking about the ability to develop maybe half of this property. When we came forward, and knowing that, you know, in our county we try to get specific with the uses, my client and I met and they went to the engineers first and said, look we need to come up with drainage plans, site plans, tell us how much land we can use here and where it's going to have to be located so that we can market to an end user. The cost of doing that is pretty significant. If this property cannot be developed as commercial property, probably it is kind of cost prohibitive to develop it at all. So, that's why we kind of regrouped and said, let's go ahead, let's put the best zoning, commercial zoning forward we can, with the use and development commitment, keeping in mind that, again, this is designated for commercial development in the comprehensive plan, we don't have any neighbors that are concerned with us using this as commercial development, and Westside Improvement Association, even in the minutes and in my discussions with Mr. Padgett and Mr. Lockard have said, we agree, from a land use point of view, commercial is appropriate for this property. The reason for the time is let's take a step back and see can we get any further with the permitting without spending a whole lot of money? The answer is, no. We're just at a point where to get with DNR, that's the next step, and it's going to cost a bit and we want to make sure we can do that with commercial development. So, I would like to just, again, remind you this is a land use decision. Everything else we do on this property will require a permit of one kind or another. Access to Hogue Road will have to be approved by site review. The flooding and drainage issues, of course, will be reviewed by County Surveyor and a drainage plan approved. Flood way, any fill issues have to be permitted by DNR, and wetland issues have to be permitted by DNR. So, commercial land use, sure. There are still a lot of hurdles to get through, but there's no sense in even getting on the track until we're sure that we can go forward with commercial. So, that's why we ask for your approval to move forward with the commercial zoning. We got a positive recommendation from Area Plan Commission. I think they recognize where we're at. We've done everything else we could in the meantime, and now we would ask for your approval.

President Nix: Thank you.

Commissioner Korb: Fred, have you got a comment on this?

Fred Padget: Oh, yes.

Commissioner Korb: Okay. I'm shocked that you do, but that's okay.

Fred Padget: Mr. President, Commissioners, I'm Fred Padget, I represent the Westside Improvement Association. We do have some comments. Mike Lockard, chair of the Westside Improvement Association Land Use Committee and I did meet with the petitioner's attorney the other day, along with many phone conversations to try to work out some assurances as to our concerns, which are, basically, the primary traffic at the intersection of Hogue and Rosenberger; the ingress/egress, and where that works or how that works out; excel/decel lanes; additional right-of-way possibly may be required to make Hogue wide enough to handle an excel/decel; we have drainage issues; flooding at Hogue and Rosenberger intersection is a concern; the condition of Carpentier Creek on the north and west side of the property we have a concern; and along with the small bridge that allows Carpentier Creek to go under Hogue Road, just a little bit west of the, east of the property. The petitioner did not attend that meeting, nor have we met with him. Based on John Stoll's comment in the Area Plan Commission staff report, this total area up here is to be in the flood plain, and this is the first I've heard that there was some flood way through there. We thought maybe there was, but we hadn't heard that definitively. I know site review will look at this closely and will be required, they will be required to have a drainage plan, if it's approved. Even so, it is always a concern when construction takes place on the flood plain. Ever since Bob's Gym was built, and maybe before, flooding at the intersection of Rosenberger and Hogue was a problem. The reconstruction of Carpentier Creek on the Kohl's side that went along with the Kohl's construction, did help considerably, but, at least in our opinion, did not totally solve the problem. We certainly don't want to worsen this problem because of the proposed development, and maybe the proposed development could be encouraged to help eliminate the remaining problem. If Carpentier Creek is to take on more drainage from this property, is it capable of handling it? We have a question about the condition of the creek north of Hogue Road, as well as the small bridge across Hogue that I'd mentioned previously. Additionally, the creek handles drainage from the east around Vanness Street, Dane Avenue, and that area. They currently have some problems. They had some issues with the Drainage Board maybe a year ago, we don't want to see that problem worsened. The other concern about flood control is that often the solution is retention ponds or something of that nature. Since the plan's not far enough along, we don't know how the drainage is going to be handled, but, for the most part, I think retention ponds are an attractive nuisance, but, more important is maintenance of the retention ponds. I've not been able to find an agency that has inspection powers after construction of retention ponds on private property. Even if they do, do they have work force to handle it? If a retention pond is not properly maintained, it doesn't perform adequately, of course. Whatever drainage plan is approved, it should include provisions for some landscaping to keep some of the mature trees. It would be great, if there is a wetlands there, to make it into kind of a riparian habitat. We also have concerns about ingress/egress to the property. Hogue Road curves near the west of the property and is a heavily traveled two lane road. The staff report recommends a traffic study, but, so often a traffic study is done indicating a certain traffic pattern, but, subsequently the traffic increases. Provisions should be made that the developer is responsible for some portion of the cost, if improvements, such as a light or a road widening is required

in the future because of a cumulative effect of development. What I'm really talking there is an incremental participation in whatever the cost is. Excel/decel lanes would seem to be required, and if it was at all possible, it would be ideal to have the entrance aligned across from Rosenberger, at the intersection there with Hogue. Maybe the major concern is the quality of the proposed development. This developer owned property on the south side of the Lloyd, across from Dorothy Drive. It was used as a landfill for many years, contaminating Carpentier Creek, and as I understand, had unresolved violations with either DNR or IDEM for at least 12 years or more. The developer either never reacted, or apparently was not inclined to resolve those violations. The violations were finally lifted when Dennis Owens took control of the property and did the remedial work. Based on these actions, and to the best of my knowledge, the inexperience of the developer doing this type project, I'm very concerned about what quality of development would take place. Does past practice predict future actions? This area is surrounded by commercial, manufacturing, agricultural zoning, and all this considered, the proposed zoning is probably appropriate to the area. Though it's more of a business decision, we already have vacancies in the area, especially in the University Shopping Center. Without a preliminary plan, it's difficult to judge if the rezoning request is on a sound basis, and if it will be in the best interest of long term development in that area. Having said all that, we do wish we had some assurances about our concerns, but we do have faith in the Drainage Board, we have faith in site review, and the other agencies that will be involved to assure proper development, particularly if it's wetlands there will be a lot of oversight. We also have many neighbors who will for sure help watch over the project, if approved. Based on that, we do not oppose the project. So, thank you. If there's any questions, I'll gladly try to answer them.

Commissioner Korb: Sounds to me like there's a lot of "what if's" there. Your meeting with Krista, were you comfortable?

Fred Padget: Pardon?

Commissioner Korb: Were you comfortable in terms of you felt like you were being told the truth? Again, west sider—

Fred Padget: Our contacts have been primarily with the petitioner's attorney, and we've dealt with her on many occasions, and we have a high regard for her and her integrity and we believe we were being told, as best they could, what they felt was the situation right now. It's like a catch 22—

Commissioner Korb: Sure.

Fred Padget: —we don't know anything about the plan, and from their side of it they don't want to do any more of the plan, because of the cost, unless they have some assurance that they can go forward with the project. So, it's—

Commissioner Korb: But, initially, what you're saying is C-4 you're comfortable with that?

Fred Padget: The C-4 doesn't bother us with the use and development eliminating the businesses. A C-4 has roughly 174 type businesses it can have.

Commissioner Korb: Right.

Fred Padget: They are eliminating I think 16 or so of the most onerous.

Commissioner Korb: I just don't want to see another Eagle Valley.

Fred Padget: I agree with you.

Commissioner Korb: Because we're going to have some kid get killed out there because the developer just flat out came in and fibbed to us.

Fred Padget: Well, as you well know, we feel like we were slightly misled on Eagle Valley.

Commissioner Korb: Slightly?

Fred Padget: Or Eagle Village. There was another proposed rezoning for some student housing that we did object to and fought strenuously against. I agree with you, I think Eagle Village is poorly devised.

Commissioner Korb: Krista, can you come back to the microphone? Fred, would you just stay there, if you would. You know, you've gotten a pretty high recommendation there from a tough old boot, which is great. How can you work with the Westside folks to, I mean, I'm assuming Jerry is going to put something in there either business related or something to lease. Just guessing. Oh, yes?

Dennis Owens: Can I (Inaudible. Not at mic.)

Commissioner Korb: Absolutely. Are you Jerry David?

Dennis Owens: No, I'm Dennis Owens.

Commissioner Korb: Hi, Dennis.

Dennis Owens: How are you? Welcome.

Commissioner Korb: Thank you.

Dennis Owens: I've been up here many times to you guys. I developed Carpentier Creek.

Commissioner Korb: Okay.

Dennis Owens: I've worked with Fred, and when this first came up I went to Fred and told him that Jerry, what he wanted to do.

Commissioner Korb: Okay.

Dennis Owens: There's about six acres over there, and I do have most of the hydraulic work, and I know what it's going to take to get that done. It's going to be expensive, depending on how much Jerry wants to save. Now, I've talked to him and I think their main thing is that they would like to do actually is put an office building over there, which I think he's talked to Fred about an office building over there. Him and I have talked about that, and that's basically for their concrete plant. He, and move their, a few storage buildings over there.

Commissioner Korb: Okay.

Dennis Owens: And, that's basically, I'm of the opinion guys, and I think I probably know as much about this thing as anybody around, about what can be done over there, and I'm of the opinion that if he gets four acres out of it, he's going to be doing good. Because, and they do own ten acres in the back of there, so, retention ponds and everything that Fred and I talked about, and if you can tell Fred, or ask Fred, I'm the one that talked to him and Mike about this thing, about the county donating that ground over there, because that road is going to have to be widened sooner or later anyway. They need to get access in there. They need to have decel lanes, just like they say, and that's what needs to be done. So, that's not an issue. He's going to have to do that to get that done.

Commissioner Korb: He being Jerry?

Dennis Owens: Him, being Jerry David.

Commissioner Korb: Okay.

Dennis Owens: And, I'm the one that advised him to, you know, try to get you guys to go along with this and approve the rezoning, so he don't have to spend a ton of money. That's, it's really going to be expensive to get that, the study done.

Commissioner Korb: Uh-huh.

Dennis Owens: But, it might not be. It may depend on how much he's willing to give up—

Commissioner Korb: Uh-huh.

Dennis Owens: —and what he has to do here to get it done. So, but, it can be done, believe me, I know. He will do whatever, and, you know, Krista she don't fool around. She's well respected by all of you, and I know that. I've copycatted a bunch of her things that Westside Improvement puts in these things whenever you agree to this. So, I know that she knows what she's doing, and Fred is willing to work with her. I think that you would be safe in letting Jerry do this, because it's a good project for him. If you've got any other questions about the technical parts of it, I think I can answer them. When I can't, I think Bill Jeffers is here. Is he still here? Yeah, he can answer about anything about this thing, because I've been working with him on this thing for three or four years.

Commissioner Korb: Okay.

Dennis Owens: And John Stoll too. All he wants to do is get the thing rezoned, and then let you guys, the site and everything else will take care of itself. If he can't meet the criteria, it will never happen.

Commissioner Korb: Krista, are you comfortable that your client will work closely with Mr. Padget?

Krista Lockyear: Jerry?

Commissioner Korb: And the Association?

Jerry David: I'm sorry?

Krista Lockyear: Will you come up here?

Jerry David: Thank you.

Commissioner Korb: Sure.

Jerry David: I've got two artificial knees, and neither one of them work. Yes?

Krista Lockyear: They would like an assurance that you would work with Westside Improvement Association as you develop.

Jerry David: Yeah.

Krista Lockyear: Okay.

President Nix: Please state your name for the record.

Jerry David: I'll work with anybody.

President Nix: Mr. David?

Jerry David: To me it's therapy.

Commissioner Korb: Jerry, we need to have you say your name and—

Jerry David: Jerry David.

Commissioner Korb: There you go.

Jerry David: I live down in the river bottoms out on Shore Road.

Commissioner Korb: Sure.

Jerry David: I bought this property recently. I own, I did own the blacktop plant next door. I sold that to my kids.

Commissioner Korb: Okay.

Jerry David: We'll probably use that also as parking area for them.

Commissioner Korb: Okay.

Jerry David: Of course, my daughter wants a three story building for an office too, but, I mean, that's out of the question.

Commissioner Korb: Kids, I tell ya.

Jerry David: Whatever we have to do will be done.

Commissioner Korb: Okay, okay. I appreciate that.

President Nix: Is there any other public comment?

Jerry David: I'm sorry?



Commissioner Korb: Uh-oh, here comes Mr. Jeffers.

Bill Jeffers: Good afternoon. I wish I had written down several things other people had said so I would cover everything, but that's probably unnecessary anyway. Earlier in your staff meeting I made a comment that the flood way issue had been brought up during the Area Plan Commission hearing of this petition, and that was an incorrect statement on my part. I checked the minutes, the lady who keeps the minutes for the Area Plan Commission is extremely accurate and keeps them verbatim and prints them, and publishes the verbatim minutes, and it was not brought up. I did not bring it up. I thought I had. I checked my, went back to my office and checked my notes and found that I had brought it up to Mr. Owen at one of our casual meetings, you know, just an office meeting to discuss some aspects of this development and the one across the street called Carpentier Creek Pavilion. That's when that issue was discussed. I wish, and I don't know, does this picture expand out? Okay, so, you can see the location, there was a pointer up here at one time. Caddy corner from your....that's the location that the petitioner owns, and then caddy corner is the Carpentier Creek development that houses Kohl's department store currently. The old creek, or the creek bed runs down through here, through Mr. David's current asphalt batch plant, and then it used to run through the Carpentier Creek property where that green area is. That channel has been moved over here, as everyone knows. So, Mr. Owen is correct when he says anything can be done. When he went and brought that property, I told him there was no way that the Corp of Engineers and DNR would ever allow for that new channel to replace the flood way. That was my opinion. Bob's Gym is totally, if you would go to the flood way diagram you have. Bob's Gym, as you can see, is 100 percent in the flood way. That is all flood way, according to this map, the 1981 flood way. I told Andy Easley when he went to build Bob's Gym, or design it for the fella, there was no way that DNR and the Corp of Engineers would ever allow that to be built in that flood way, and it's built there. Now, there have been two flood way studies done, one by Mr. Easley and one by Morley and Associates, and you can go back to the previous picture, that, as you can see, Bob's Gym is built. The flood way's been altered according to DNR and the Corp of Engineers. Kohl's was built. The flood way's been altered according to DNR and the Corp of Engineers. It's now contained within the new channel. That was something that I never thought would happen. Now, when Mr. Owen had his study done for Carpentier Creek Pavilion, DNR did not require him to go north of Hogue Road with his permitting. They only required the permit to cover this area down through here. But, as Mr. Owen said, told you earlier, there is preliminary engineering that covers all this entire area up here, and that preliminary engineering could go forward to determine the possibility of a new flood way. The problem that occurs is that this channel that runs down through Mr. David's property through the asphalt batch plant, or his heirs and assigns property at this time, is not sufficient to carry the water to the bridge. The Hogue Road bridge, owned by the county, can carry more water than it currently does, but this channel is not capable of getting the water to the bridge. The channel from the bridge down through Carpentier Creek is sufficient that the Corp of Engineers and DNR has assigned a new flood way within the channels. The bridge going to Kohl's will pass the 100 year storm. So, what I'm getting to is that, if you would imagine that the Hogue Road bridge were elevated and widened, the same as or nearly equal to Kohl's entrance bridge, then you would see a bridge in Hogue Road that would pass the 100 year flood, thereby allowing the flood way to be contained within this channel here, if that channel were reworked, same as or similar to the channel that was reworked through Kohl's. Until that happens, and you can go back to the previous, the reason I didn't make all these comments in Area Plan Commission, basically, is they wanted them all to made here or at Drainage Board. Right now the flood way looks like this down to Hogue Road,

which is right here, but south of Hogue Road the flood way is right along Rosenberger and over here in the new channel. So, to reduce this down to something similar, you would have to rework this entire old channel and carry the water through that asphalt batch plant and through a new bridge that the county would have to build, and it would have to be elevated at least as high, and made to be at least as wide as what Kohl's paid to have done to enter their property. In doing that, and I'm sure that your County Engineer will verify that, Mr. David, or his heirs and assigns who now own the batch plant, are going to have to give up substantial right-of-way for a new, elevated bridge. I mean, you've run into that out on Green River Road. The higher you go, the wider you go. So, they're going to lose all that property. I just want to point those things out, because they've come up in discussion today and previously, and thought it might be pertinent to your consideration.

Commissioner Tornatta: Okay, then I have a question. Let's say we grant them the rezoning, is there, how would a contingency, or is there such a thing to have a contingency on this grant that they would be receptive to opening up for that particular right-of-way that would encompass the waters for Carpentier Creek?

Bill Jeffers: That sounds more like a legal question, as to whether you can attach those kind of contingencies on a petition. The way I understood it, I'm a member of Area Plan Commission, as you know, and, because we're told basically just to consider the—

Commissioner Tornatta: I guess, what I'm looking at is, that would potentially open up their entire acreage, would it not? Because then they wouldn't be considered in the flood way, is that correct?

President Nix: Let's get Mr. Mills to answer that.

Bill Jeffers: I think Mr. Mills might be able to answer that for you.

Commissioner Korb: Brad?

Dennis Owens: Go ahead, Brad.

Brad Mills: Okay. Brad Mills, Area Plan Commission. Your question on the contingencies, you can do private covenants and restrictions, a private agreement, however, that's really what the use and development commitment is used for. So, if you want to have some conditions, if you want him to agree to dedicate a certain amount of right-of-way, agree to put so much money towards a traffic signal, towards construction of the bridge, widening out the existing channel, that's something that we really should have in the use and development commitment. He can stand here and tell you that he's a good guy and he's going to do all these things right, but we really don't have anything that we, in the Area Plan Commission, could enforce, unless it's in black and white saying he's going to be a good guy and give us "x" amount of right-of-way, he's going to put this much money towards a bridge. Whatever it is, he needs to spell it out for us to enforce.

Commissioner Tornatta: Well, in light of our County Surveyor presenting us this type of information, this might be good for the entire west side. If we were to at least revisit and address the potential that we would have, maybe relieve some of the water way by putting it in channels, which would then go through Carpentier Creek.

That's a pretty substantial movement of water, and potentially opens up some land in that area.

Brad Mills: I agree completely. If, I mean, like Mr. Owens goes through and makes those major improvements, it definitely would improve it. So, if he's willing to commit to that, but, obviously, that would be his decision.

Krista Lockyear: If I could, Commissioner Tornatta, he doesn't own that land that Mr. Jeffers just showed us needs to be improved. I mean, Carpentier Creek is not on my clients land that we're seeking to rezone right now.

President Nix: The question was, there's, the land that this bridge or this structure abuts is part of your, the bridges in the front of the property?

Krista Lockyear: It's in front of the—

President Nix: Salvage—

Krista Lockyear: —cement batch plant, not in front of this property we're rezoning.

President Nix: So, that—

Krista Lockyear: So, a use and development commitment regarding this rezoning—

President Nix: Is owned by someone—

Krista Lockyear: —can't affect other—

President Nix: —else?

Krista Lockyear: Exactly.

Commissioner Tornatta: Okay.

Dennis Owens: Troy, I have something. That, John Stoll and I talked about this when, we was trying to figure this out the best way to go. We explored that, the fact of, even building a new bridge there, but that bridge is not old enough. John and I examined it, and I don't think it's near, I mean, where it would be cost prohibitive to do that, and the bridge is not that old. But, the hydraulics that I have, and show, there's about two and half times the amount of water comes on that batch plant, which Bill and I have talked about before, sits in the middle of one, that creek over here, and then the flood water that comes across the back of that property there, which is Mr. David's. Now, there's more water that comes across there than comes through that creek. Then, if you can believe it, but I've got the numbers, and the hydraulics prove it that it does. By putting that, widening Carpentier Creek on the other side, we have reduced the amount of water that backs up in Bob's Gym by at least 70 or 80 percent.

Commissioner Korb: When you say on the other side, you mean where Kohl's is?

Dennis Owens: Yes, sir.

Commissioner Korb: Okay.

Dennis Owens: By that, we opened that creek up and made it wider. The bridge is put in there at the height of the 100 year flood. We're about two tenths higher. That thing right there, we have almost eliminated the water that goes up in Bob's Gym parking lot. Now, if he puts in retention ponds in the back of this property right here, it's going to benefit Bob's Gym, Hogue Road, and everybody else, because there's a tremendous amount of water coming across Hogue Road still. But, it's able to take it because of Carpentier Creek, it's on the other side there. The drainage runs in front of Bob's Gym, his drainage ditch combined with our creek being that much larger, but, it's not even financially feasible to Jerry, for six acres, to ever consider anything like that, and he don't even own the property. What he's got to do is go over there and come up with retention ponds back there, in the back of there they own ten more acres back there, and back, that runs along that creek, which could be utilized for these holding ponds, or whatever you want to do. This thing here can be done, and it will be a benefit to everybody, it will pick up the tax base again, and it's not necessary to even consider anything on that scale. I mean, you know, down the road you guys get ready, when that bridge wears out, John and I have talked about it, you put in a new bridge, elevate it up, and everybody will be better off. But, just to do that for a six and half, 6.2 acres project, is not even feasible. Thank you.

John Stoll: Two things, first on that bridge, long term ,when that eventually is replaced, if you can picture it being a similar elevation like the private bridge that Kohl's owns, and then try to picture providing access to those abutting properties on the north side of Hogue, that will be the biggest obstacle, because you'll have extremely steep driveway grades. So, there would be a substantial problem there. I know that that's not part of the petitioner's property, but that would be a major issue, if and when that bridge is ever replaced and the road is elevated. The other issue, I guess, would be kind of in regard to what Brad Mills said about the use and development commitment, as it stands now, I guess, there's no guarantee that the recommendations for the traffic study would be implemented, if I understand it correctly, so, would we need a use and development commitment to at least ensure that any recommendations from the traffic study were constructed? Because if it came to site review without any binding commitment, I guess, how would we make sure that those recommendations were all enforced?

President Nix: Thank you, John.

Commissioner Korb: Really, John, what we're talking about, even if we ask for those things, that doesn't necessarily mean they're all going to be implemented. So, there may not be that cost to Mr. David in the development of this property, is that correct?

John Stoll: It would depend ultimately on what was built there, what the traffic study—

Commissioner Korb: Right.

John Stoll: —said the traffic generation was, and take it from there. So, if it wasn't a high traffic generator, you wouldn't have massive improvements.

President Nix: Thank you.

Bill Jeffers: Just to clarify one or two points, and I'll try to be brief. Detention basins work fine, you know, if they're placed properly and sized properly, however, when you try to build a detention basin in a 100 year flood plain, I don't think DNR or Corp of Engineers is going to allow you to elevate the 100 year flood plain in a flood way up to the point that it will contain the 100 year flow. So, basically....oh, do you have

a tape change? I'm sorry. So, basically, well, that can be taken up in Drainage Board. What's happening here is you have a watershed that goes all the way up to Kasson, Indiana. Red Bank Road on one side, Harmony Way on the other side, all the way up to 66. All that water is coming down through here. Way over there from Diefenbach, all that water is coming, from Koring Lane, all that water comes down through here, a little mud puddle duck pond is not going to control anything but what runs off this six acres. The reason that yellow shaded area is shaped like it is, and I'm not being contentious, and I'm not disregarding or disputing what Mr. Owens is saying, it is true that that bridge can carry about one third of the water that comes down from all that watershed I described, because only one third of the water is being channeled to that bridge. The rest of the water spills out of the creek back here at the railroad tracks, goes across the entire six acres, two thirds of the entire flow from the 100 year flow is coming across that acreage, that's why it's so wide there. Then, it comes across Hogue Road. I didn't want to belabor this because all this is going to be discussed eventually in Drainage Board, at some point in time, whether I'm there or not, because it could be, you know, whenever. But, I heard at least one of the Commissioners express a concern about flooding Hogue Road. The reason Hogue Road is flooded is because two thirds of the water that comes down out of that watershed is not making it through the bridge, it's going over the top of the road, at or west of Rosenberger Avenue. So, in order, I'm just repeating myself because to get the water off this ground that is seeking to be rezoned, the water has to be carried through a channel and to the bridge. I believe the bridge has to be elevated and widened, similar to Kohl's entrance bridge.

President Nix: Thank you, Mr. Jeffers.

Bill Jeffers: Those are the comments I have today.

President Nix: We'll hold just a second for a tape change.

**(Tape change)**

Commissioner Tornatta: If this project went back to Area Plan, with use and development commitment to be established, what does that do to the time line? Or does that restart the 90 days?

Brad Mills: That would restart the 90 days if we send it back. It would be a modification to the use and development your asking for to include some of these comments, is that what you're implying?

Commissioner Tornatta: Well, it just seems to me like, you know, it's warm and fuzzy, we have everybody here, but at the same time we've run into this before that if it's not in black and white, we have no jurisdiction to go after, or to give any type of, levy any type of issue on these people. And, everybody here I feel is telling the truth, but at the end of the day, it needs to be in black and white. So, you know, I would almost challenge the Commissioners to follow me and recommend this go back to Area Plan for a thorough use and development commitment.

President Nix: Mr. Mills, do you have any other comments?

Brad Mills: No.

President Nix: Is there any other public comment?

Dennis Owens: Well, Troy, I agree with you, we're all hearing a warm and fuzzy thing and you want to cover, you know, all the things that can happen, but if you pass this thing, and you give him the C-4 thing, we all know that he can't do anything without the site review and everything else. You already have all that complete control. That cannot get out of that site thing, no matter what he, if he don't do what's in this thing here, and he don't meet the federal thing, if he don't get the codes, if he don't get the permits, if he don't get all that done, you guys aren't going to give him no permit anyway. The fact that he agrees to everything up there, is of no significance, if, when you get to the thing, you've still got the last say. There's no way that you guys can lose any control over this. If you go ahead and give him this thing, give him, pass the, give him the C-4, with that on the thing, and he has to do everything to make the commitments to get the permits. I mean, that's the law.

Commissioner Tornatta: It's not, it's just going back to the fact that we don't know when this project is going to be done, we don't know when everything's going to transpire, and we don't know that these people are going to be sitting here or he's going to be sitting there. So, that's a commitment that we're making mano a mano that we need to be making on paper. If it makes the Area Plan feel more at ease, if it makes these other organizations feel more at ease, then I think for what the time it would take to run through that process again—

Dennis Owens: Well, I don't have any problem with that.

Commissioner Tornatta: —it's going to bring everybody in line. That's all. That's all, because I trust Jerry and what you're saying, and Krista, don't get me wrong, but, I think that we now need to see it on paper, once it's on paper it runs through and everybody gets on board.

Dennis Owens: Okay, but what, well, what are you looking for as far as the commitment things? I mean—

Commissioner Tornatta: Well, I think that's going to be discussed during Area Plan, and then they are going to send it back to us with a blessing on what has been established in the meeting and what has been established by the Westside Improvement and the people that are remonstrating.

Dennis Owens: Okay.

President Nix: Mr. Owens, I'm just curious, what role are you playing in this? Are you going to be the developer?

Dennis Owens: No.

President Nix: Or are you just here speaking on behalf—

Dennis Owens: I'm just helping Jerry.

President Nix: Okay.

Dennis Owens: Him and I have been friends for 50 years, and whenever that, I tried to buy that property over there. I was going to extend my permit over there, which I know can be done now see. Because I already had the Corp, if I could have got that bought, they could have took my permit and extended it all the way out there.

Commissioner Korb: Are you the guy who did the Kohl's development?

Dennis Owens: Yes, sir.

Commissioner Korb: Thank you.

Dennis Owens: Why, your wife likes it?

Commissioner Korb: No, it just makes the whole west side look like less of an armpit and I really appreciate the way that looks coming over the bridge.

Dennis Owens: Well, I think we done a really good job, and I think that Fred and them can tell you that I was probably one of the few contractors that ever did a job out here where I done everything exactly like I said I would do. This thing here with Jerry, I know all he's going to get out of this thing is a couple of storage buildings and an office warehouse. I hate to see him at his age go out here and spend a ton of money to get something that you're not going, you know, it's not going to fly anyway. So, I mean, he can't spend all his money without having the thing, I mean, it's just logic. It's not financially feasible.

Commissioner Tornatta: Yeah.

Dennis Owens: But, he needs to determine how much ground he can get, and whatever else, and you guys are holding all the cards.

Commissioner Korb: Ted, how much control will we lose over this if we grant the C-4 today, do we have a final say in it?

Ted C. Ziemer, Jr.: No. If you approve this today, you're approving the rezoning, and then it is subject to, as everyone has said a number of times, they have to get site review approval, they have to get DNR approval, and they have to get all those approvals before they can go ahead with their construction, but they won't be coming back to the County Commissioners again, except to the extent that the Commissioner are involved on any of those boards.

Dennis Owens: But, every one of your, every one of your agencies, Jeff, is going to have a final say. Bill Jeffers, John Stoll, everybody is going to have a say. You're not, we can't do anything without all these agencies. We've got to comply. We can say we're going to fly over the moon, but it don't mean nothing if you guys don't see us do it.

Commissioner Korb: Okay, thank you.

Dennis Owens: Thank you.

President Nix: Any other public comment? Ms. Lockyear, would you like to close then?

Krista Lockyear: Sure. I would like to add, with regard to the traffic impact study, a traffic impact study is only as good as exactly, you know exactly what is going to go on that property. How much area will be developed, what type of use it is. We called Jim Morley's office and said, hey, is there anything we can do to just kind of project? He said, you've got to know what you're doing before you can tell us what traffic count, and, again, you know, we've got a lot of lay people, we've got a lot of

educated people throwing out all kinds of ideas about drainage. I don't have a DNR rep. here, and we're going to have to get permits from a DNR rep. We don't have an IDEM rep. here, and we're going to have to get some permits from IDEM. That's why this zoning is tough. It's a tough piece of property to develop. But, this is rezoning, this is land use only. It's not about whether there's a wetland there and we get a permit. We can't touch a wetland. It's not about permitting to develop in the flood way. That's DNR's jurisdiction. It's not a zoning issue. We're only asking for a zoning commitment. The use and development commitment that, you know, Jerry makes promises is, I'm not sure what good that does you. That's land use, and we did make the promises on land use that the west side group is concerned about. That we won't do the environmentally nasty things on this property. Moving forward, there's all kinds of other jurisdictional agencies out there that are going to be watching over this. I think Mr. Padgett said it too, hey, we know we've got all those agencies watchdogging this, we've got Westside Improvement Association watchdogging this, we've got you guys all watchdogging this. I mean, from a land use point of view, the commercial zoning is appropriate.

President Nix: Okay, thank you. I believe there's a motion on the floor. Is there not?

Commissioner Korb: Not yet.

President Nix: Okay. Mr. Tornatta? Or, Mr. Korb?

Commissioner Korb: Well, here's where I am with this. It may or may not be appropriate discussion, but, I mean, really Krista's right, we're talking about a zoning deal here. We're not talking about bridges, we're not talking about expansions of roads, we're not, I mean, all those things are important. With all due respect, at the same time, as a west sider, who has moved from the east side to the west side to get away from the east side congestion, what has been developed with Kohl's is great, and I want to continue to see that. The thing we have going on with Wal-Mart right now is a blight. It's hideous. Let's not be coy about this, yes, the Jerry David concrete asphalt operation is owned by his kids, and eventually this project will be too. Unless they do something horribly disrespectful to you, Mr. David, and I hope they don't. Yeah, I know you do too, except for that three story building. So, I, you know, I want to have some control over this, but I feel much better hearing Fred's comments, because I respect where he's coming from. I know he's got reservations, but I'm still conflicted. I don't have 100 percent feel good thing about it, but I don't want to push it back another 90 to 120 days for you, that's a half a year goodness sakes. So, I'm stuck.

Commissioner Tornatta: Would a week help you get unstuck?

Commissioner Korb: Well, you know, it would. I know that if we don't vote on this now, then it flies on through and it's all a moot point—

Commissioner Tornatta: No, not this, I mean, we can vote on it next week. We can come back and do the same issue next week, and have the same amount of time to vote.

Ted C. Ziemer, Jr.: Yes, you can take this under advisement and indicate, and vote to hear it again next Tuesday.

Commissioner Tornatta: I mean, I'm not one to stall the issue, but the one thing that I was concerned about was that you're newly elected on this board, you haven't had



ample time to be able to go over any of these issues and then make a vote that's in the best interest of actually the place that you represent.

Commissioner Korb: Right.

Commissioner Tornatta: So, at the same time, I mean, I can understand that, and would like, if you want to, or make a motion that we delay this a week and see this—

President Nix: Let me just throw something else out, if we act on this next week, that really doesn't give Area Plan any time to make any corrections, changes, or it's basically still going to be a gentleman's agreement. Correct me if I'm wrong, Mr. Mills. There won't be any other things done through the Area Plan to make this any more binding at all?

Brad Mills: That's correct. You are acting on the use and development commitment that was submitted, and previously Area Plan has seen. Any changes that we would enforce have to go back to Area Plan Commission.

Commissioner Tornatta: But, if we send it back—

President Nix: If we send it back, then it won't necessarily be approved next week, because you all will need to hear this again before it comes back to us, is that right?

Brad Mills: Right, our deadline is Thursday that we would be sending out legals. So, it wouldn't go to October's meeting, but it would be able to go to November's meeting, and then you guys usually see it the week after that. So, this would be—

President Nix: I guess, my point is, is that we can sit and think about this for the week, but nothing's going to change on their behalf, because you all won't meet until after our meeting next week to make anything, any more agreements between the groups, is that correct?

Brad Mills: That would be correct.

Ted C. Ziemer, Jr.: I would just mention, from a legal perspective, some of the conversation that's been had here today, which addresses what will take place at site review, or in obtaining permits from the Department of Natural Resources, you can't really put that in a use and development commitment. You can't say, I agree to get the consent of the Department of Natural Resources. You've got to get the consent of the Department of Natural Resources anyway. So, I think it's a little puzzling, if you want to have an expanded use and development commitment, there ought to at least be some indication to the petitioner of what you want to see in the use and development commitment.

Commissioner Tornatta: I think the thing that's happened is, they're doing it backwards. Normally, you have all these things done, and then you bring it to the board. We've got this approved, this approved, this approved, and they're doing it in a different way. So, all, I guess, that's maybe what, and everyone's not comfortable with, although, you know, we've heard a lot of information today. I just, that's what I'm looking at.

Ted C. Ziemer, Jr.: Except, Commissioner, it went to the Area Plan Commission, there was a use and development commitment, and the Area Plan Commission on hearing that, with a use and development commitment, approved it, ten-zero.

Commissioner Tornatta: Uh-huh.

Ted C. Ziemer, Jr.: So, the commission charged with advising the Commissioners—

Commissioner Tornatta: Right.

Ted C. Ziemer, Jr.: —as to land use has indicated that this should be approved. The only thing I think, and with all due respect to everything everybody's had to say here today, I do think the petitioner, if they are going to be asked to do something further with the use and development commitment, ought to have some direction as to what that might say. Otherwise, I frankly don't know what they would put in an extended use and development commitment.

President Nix: Once again, the point I was trying to make was that nothing is going to change between now and next week, if we do in fact vote on this next week.

Commissioner Korb: So, what are we wanting? We're wanting double egress lanes, drainage? No, we're shaking our heads. I mean, what are we after? Because of terms of development of what they want to use their property for, I'm comfortable with that. I've heard from Fred, I've heard from Krista, I've heard from the developer, you know, as long as it's not another Arby's, or a gas station, and we're not doing that. So, I'm good with that.

Commissioner Tornatta: Then make a motion.

Commissioner Korb: I move we go ahead and accept this, as a C-4, from agricultural to C-4, and I say that because there are enough hurdles that this developer is going to have to jump over to get to this point. I think it's logical to understand, that if it's in a flood zone and he's dumb enough to build something there, then the insurance company isn't going to cover it anyway. If the bridge collapses, it collapses, but at this point in time I think that I'm comfortable with saying let's go ahead and accept this as a C-4 zoning. Primarily because of the commitment and the comments that we heard tonight from Fred Padgett, because I think that what he says really represents a lot of what we do on the west side of Evansville. So, I move that.

Commissioner Tornatta: Okay. I would second that knowing that you feel comfortable enough to vote on it.

Commissioner Korb: Thanks.

Commissioner Tornatta: And your meeting, so, I'll second the motion.

President Nix: A motion has been made and seconded. All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. Roll call vote. Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: Commissioner Korb?

Commissioner Korb: Yes.

President Nix: And I vote yes. Any other issues?

Commissioner Korb: Thank you everybody. Thank you, Troy.

<b>Approval of the August 21, 2007 Rezoning Meeting Minutes</b>
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President Nix: We've got one item, a little housekeeping item, we need to approve the minutes of, the zoning minutes of 8/21/07.

Commissioner Tornatta: So moved.

President Nix: I second. All in favor? Aye.

Commissioner Tornatta: Aye.

President Nix: Thank you.

(The meeting ended at 5:20 p.m.)

**Those in Attendance:**

Bill Nix	Jeff Korb	Troy Tornatta
Janet Greenwell	Brad Mills	Ted C. Ziemer, Jr.
Madelyn Grayson	Krista Lockyear	Fred Padget
Dennis Owens	Jerry David	Others Unidentified
Members of Media		

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Bill Nix, President**

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**Jeff Korb, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY  
REZONING BOARD  
NOVEMBER 20, 2007**

The Vanderburgh County Rezoning Board met in session this 20<sup>th</sup> day of November, 2007 at 4:50 p.m. in room 301 of the Civic Center Complex with President Bill Nix presiding.

**Call to Order**

President Nix: Good afternoon. I would like to call to order the Vanderburgh County Commissioners rezoning, November 20, 2007. It's about 3:48 p.m.

**Approval of the September 18, 2007 Rezoning Meeting Minutes**

President Nix: I will entertain a motion to approve the rezoning minutes from the previous meeting.

Commissioner Tornatta: So moved.

Commissioner Korb: Second.

President Nix: All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. Thank you.

**First Reading: VC-17-2007: Petitioner: Brandolyn Jacqueline Johnston  
Address: 3816-4016 & 4032 Heckel Road  
Request: Change from AG to R-1 and R-3 with UDC**

President Nix: Janet, good afternoon.

Janet Greenwell: Good afternoon. I'm Janet Greenwell with the Area Plan Commission. I'm bringing forward one petition for first reading. Docket number 2007-43-PC VC-17-2007. The petitioner is Brandolyn Jacqueline Johnston. That was change that was made yesterday. I believe the agenda reads a little different, but it was a change that was filed yesterday. That's for the property at 3816 through 4016 and 4032 Heckel Road. I would ask that you assign that to Plan Commission for hearing.

President Nix: I'll entertain a motion.

Commissioner Tornatta: So moved.

Commissioner Korb: Second.

President Nix: All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. I believe we need a roll call vote for this. Is this on first reading?

Janet Greenwell: It's first reading.

President Nix: Yeah. Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: Commissioner Korb?

Commissioner Korb: Yes.

President Nix: And I vote yes. It passes.

**Final Readings: VC-7-2007: Petitioner: Lotfi Hadad  
Address: 700 and 720 Kimber Lane  
Request: Change from AG to C-2 with UDC  
Action: Approved 3-0**

Janet Greenwell: The first petition that we have for final hearings tonight is your docket number VC-7-2007. Aaron Kendalls representing Dr. Lotfi Hadad appeared before Plan Commission on November 8, 2007 with a request to rezone the properties at 700 and 720 Kimber Lane from agricultural to C-2 with a use and development commitment. This is a 1.99 acre site located on the west side of Kimber Lane between Virginia and Columbia Streets. The petition was continued a number of months and was amended twice by the petitioner to address concerns raised by County Engineer John Stoll concerning the width of the county section of Kimber Lane, which is insufficient for large truck deliveries. John Stoll has indicated that the current use and development commitment does satisfactorily eliminate those uses that utilize large trucks from being developed on the property so that his office no longer has any objection to the rezoning. The comprehensive plan does project this area as an area of commercial development. The change in zoning from AG to C-2 is consistent with the overall development plan for the area. The petition was recommended by Plan Commission for approval with nine yes votes, zero no votes, and one abstention. Do you have any questions?

President Nix: Thank you, Janet. Is there someone here to speak to this? Aaron Kendall?

Aaron Kendall: I'm Aaron Kendall.

President Nix: Okay. Any comments at all?

Aaron Kendall: I think that pretty much summed it up.

President Nix: Okay, thank you. Are there any remonstrators? Questions from the Commissioners? I guess, there's no summation. So, I will entertain a motion.

Commissioner Korb: So moved.

Commissioner Tornatta: Second.

President Nix: All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. This requires a roll call vote, Janet, is that correct? Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: Commissioner Korb?

Commissioner Korb: Yes.

President Nix: And, I vote yes. Thank you.

**Final Reading: VC-14-2007: Petitioner: Kendall Development LLC  
Address: 7235 North Green River Road  
Request: Change from AG to C-4 with UDC  
Action: Approved 3-0**

Janet Greenwell: This, if I'm, I will check with Madelyn, but we switched the order in the packet.

Madelyn Grayson: Yeah, VC-14 should be next.

Janet Greenwell: Okay, the next petition that we're bringing is VC-14-2007, 7235 North Green River Road. Craig Kendall of Kendall Development is requesting to rezone a portion of his property located at 7235 North Green River Road from agricultural to C-4 with a use and development commitment, which prohibits adult entertainment uses on the site. This is a 20 acre site located on the east side of Green River Road between Heckel and Millersburg, across Green River from the Goebel Soccer Complex. The comprehensive plan future land use map designates the land east of Green River Road for agricultural use due to the generally low elevations. However, this particular site has a ridge of higher ground through the middle that is not in the 100 year flood plain, making development on this site fronting on Green River Road appropriate. The North Green River Road corridor is expected to continue to develop, public sewers have been added and extended to the area, and with the widening of the Green River Road, the infrastructure will be in place to support development. County Engineer John Stoll has indicated that an additional right-of-way will have to be acquired from this property in order for the county to construct the Green River Road widening project. The petition received a no recommendation vote from the Area Plan Commission at their meeting November 8, 2007 with four yes votes, five no votes and one abstention. The minutes of our Plan Commission meeting, I believe will reflect concerns raised by some of the members regarding the adequacy of the proposed use and development commitment.

President Nix: Is the petitioner here for the Craig Kendall development?

Mark Miller: Good afternoon. I'm Mark Miller. I'm the attorney for Kendall Development. Mr. Kendall is here, and Mr. Dauby who owns some property to the north of the subject property is also here to speak in connection with this matter. That is significant, gentlemen, because the property which is to the north shown on the slide was zoned, rezoned C-4 just two or three months ago, without any use and development commitments. One of the concerns is noted in the staff report, or the Commission, Area Plan Commission report is that some commissioners raised a question about whether the use and development commitment was sufficient. So,

Mr. Dauby and Mr. Kendall have sat down and discussed that issue between themselves, and have reached a tentative agreement that will restrict certain uses on the property. I would like to briefly summarize that. The parties have agreed that there would be no “package liquor stores” on the property, stores that sell liquor items, but not exclusively, would be permitted. The parties have agreed there would be no bars on the property. We’re talking both Mr. Dauby and Mr. Kendall’s property now. There would be no true bars on the property, although establishments that allow the sale of alcohol, but are primarily restaurants would be allowed. There would be no off-track betting facilities, although establishments that sell lottery tickets would be allowed. There would be no truck or vehicle repair or maintenance facilities for trucks 11,000 pounds or greater. So, no large trucks, no large vehicle repair. There would be no tire recapping or retreading facilities, and in use group 19 which is primarily amusement parks and rather large types of facilities like that, there would be no permitted uses in use group 19 at all, except a child care facility would be allowed and a miniature golf facility would be allowed. The parties, it was mentioned about the development along Green River Road, and there was a lift station required in Mr. Dauby’s development of his property. Mr. Kendall and Mr. Dauby have also been discussing easements that would allow this, the parcel that’s before you today, to access that lift station, and a re-design of that lift station that would be subject to approval of the sewer department as to its adequacy of design. There are some other issues that they’ve been working together on. So, in summary, the concern that the commissioners raised, or that the Area Plan Commission raised about restricting some uses out there, they were not specific about it, but Mr. Kendall was proactive, went to the neighbor, was the only person who showed up at the Area Plan Commission, and they’ve reached some agreements as I’ve just summarized them. I understand that there may be a question about the road improvements within the right-of-way and about the grading work that’s going on. Rather than, I’ll summarize, but Mr. Dauby and Mr. Kendall are here, they can answer any questions that you might have about that, but my understanding is that Mr. Dauby is doing some significant grading work out there, and is filling the property in up to the level that is required for the road expansion at this time, and consistent with the access plans that he understands that the county has requested. Mr. Kendall does not intend to begin any work at this time. There’s no plan to begin scraping dirt, but would understand and agree that when that does occur that similar improvements would need to be made in order to maintain proper and safe access to the property.

Commissioner Korb: Mr. Miller, I understand what you’re saying and that Mr. Dauby and Mr. Kendall have gotten together on this, is there anything in writing with regards to those limitations?

Mark Miller: I have a document that I just got from Mr. Dauby’s attorney. I believe it’s acceptable.

Commissioner Korb: Okay.

Mark Miller: It is subject to, the way it’s written, it presumes that the zoning has been granted.

Commissioner Korb: Got it.

Mark Miller: So, if the zoning is granted, we’ll walk outside and execute and proceed.

Commissioner Korb: Super, can you bring that document forward, does our County Attorney need to look at that?

Mark Miller: Probably not.

Commissioner Korb: No?

Mark Miller: These are private covenants, Mr. Korb.

Commissioner Tornatta: That would be between them.

Commissioner Korb: Okay. For the other two Commissioners, I was at that meeting and the concern was that it was an unfettered C-4, but then the greater concern was, as was indicated by Mr. Miller, that previous, less than three months before, C-4 was granted with absolutely no restrictions. Mr. Dauby came forward and said he wished he would do that. Mr. Kendall called me at my office as well, and at the time, in all fairness to Mr. Kendall, he had acted upon the instructions of the Area Planning Commission, and they had said no adult entertainment. So, as you're looking at this, that's why it says that. He wasn't trying to be cute or funny, it's just what it was. So, for the fact, and the only reason why there were no votes that evening is because it was so broad in scope. The fact that they have come back with these restrictions I think is positive step forward, and I'm more comfortable with that. So, Mr. Kendall, thank you for that effort on your behalf, and Mr. Miller, thank you for coming.

Mark Miller: Thank you, Mr. Korb.

Commissioner Korb: You're welcome.

Commissioner Tornatta: Well, I would just like to say that I've talked to Mr. Dauby, and wanted to make sure that he had the covenants in tow, and he knew that that was going to happen. By executing this, if we were to approve this, we would like to see that signed expeditiously and make sure that that's handled in good faith. I also talked to Mr. Jeffers, who was a no vote, our County Surveyor, and essentially he explained some of the terms that he would like to see. One of them was the grading and the grade leveling at time of the purchase of the easement, and I think that we've kind of addressed that. So, that was another big point. Then, he thought, after that, he could go along with something, not speaking for him, but he would feel more comfortable. So, he feels comfortable with Mr. Dauby's covenants that they have together and the grading increase. So, if we could just make sure that we have your client on the record saying that he's going to do that, I would feel very comfortable.

Mark Miller: Okay, great.

Commissioner Korb: Mr. Miller, one more quick question, if you can? So, the private covenants, they would not be placed of record and wouldn't be covenants running with the land?

Mark Miller: No, they would be covenants that ran with the land, Mr. Korb.

Commissioner Korb: Got it.

Mark Miller: Absolutely, and they would be placed of record.



Commissioner Korb: Okay. Super.

Mark Miller: But, the agreement was, essentially, Mr. Kendall was willing to commit to that if the rezoning occurred.

Commissioner Korb: Sure. No, I understand that.

Mark Miller: Okay, thank you.

Craig Kendall: I'm Craig Kendall, and as your request, or you wanted me to state.

Commissioner Tornatta: I mean, I think, I've talked to your attorney—

Craig Kendall: Right.

Commissioner Tornatta: —and I think we even had a comment over the phone, and maybe this is, this whole thing, I know at the time that you came in here and maybe didn't have an attorney present with you at the time, maybe that threw somebody for a loop and just the things that Mr. Dauby had that you didn't because you haven't got all the ducks in a row on your property. So, I'm sure there were some incidents there, that's when I went back and checked, nobody really had a problem with you or your property. So, I don't think that was anything big, just that you didn't have anybody in place at the time, and Mr. Dauby did on most of his property that was probably more assuring to them at that point. So, as far as that goes, I think we've, I've satisfied all of my questions.

Craig Kendall: Alright, thank you.

President Nix: Mr. Dauby, do you have any comments at all?

Ronald Dauby: No, as long as this agreement is met, I have no problems with it at all. I would love to see you zone it that way.

President Nix: Thank you. Okay, at this time I would ask for remonstrators to come forward. Any remonstrators? Seeing none. Is there any additional questions from the Commissioners?

Commissioner Korb: None.

President Nix: Commissioner Tornatta?

Commissioner Tornatta: No. With respect to our board that goes through these, although they voted five-four, as I've talked to them, I think they feel comfortable with the new findings, so I vote to approve.

President Nix: Before we do that, Mr. Miller, do you have a summation at all? Anything else you would like to say?

Mark Miller: No, Mr. Nix, thank you.

Commissioner Korb: I move to approve.

Commissioner Tornatta: Hold on, we do have a question back here.

Debbie Schwent: Hi, I just have—

President Nix: Please step up to the mic. Please say your name for the record also.

Debbie Schwent: Hi, my name is Debbie Schwent, and I live at 6431 Green River Road. I actually just, I don't know why I came to this meeting, actually because of the Green River Road widening, but are we, I didn't know, are we getting sewers out there?

President Nix: From, it's my understanding from Pigeon Creek, or from the creek south there is no plans for sewers at this time. Are you talking about sanitary sewers?

Debbie Schwent: Yeah.

President Nix: No. Do you live south of the creek?

Debbie Schwent: I live south of that property, yes.

President Nix: Yeah, at this time there's no plans for that.

Debbie Schwent: But there's going to be sewers there?

President Nix: I believe Mr. Dauby can address that. You're installing the sewers?

Ronald Dauby: Yes.

President Nix: Yes, he's doing that. Mr. Miller?

Mark Miller: My understanding, Ma'am.

President Nix: Please step up to the microphone, if you would, Mark, or Mr. Miller.

Mark Miller: My understanding is that there is a creek that runs just to the south of Mr. Kendall's property, and from speaking with the sewer department, that creek is a boundary line in terms of the sewer development. So, if you're north of the creek, you're going to flow toward the subdivisions that are to the north and existing where there are lift stations and other facilities. If you're to the south of the creek it goes all the way to Lynch Road, I believe, before the next lift station.

President Nix: Correct me if I'm wrong, because we don't do sewers here.

Debbie Schwent: I just was—

President Nix: No, correct me if I'm wrong though, this is a private development and you're paying for all the improvements, the sewer lines on your property, is that correct?

Ronald Dauby: Right.

President Nix: So, this isn't part of—

Debbie Schwent: I just wanted to know, yeah.

President Nix: Just to make sure we're clear.

Debbie Schwent: Like I said, I just happened—

President Nix: Just to make sure we're clear on that.

Debbie Schwent: Okay.

Commissioner Tornatta: He's got a pump station, Mr. Dauby has a pump station on his property and then that would have to be worked out with Craig on his property. So, that's an inter-agreement between the two of them.

Debbie Schwent: So, okay, so, he's going to build up this property and that little creek, which is just little right now, does have a tendency to flood. Because I have been flooded out of my home, as other people have.

President Nix: Ma'am, Ma'am, and—

Debbie Schwent: Yeah, I just, like I said, I just found out about all of this and it's just kind of a shock to your system.

President Nix: Typically what happens, and this comes through another meeting that we have here. We have a lot of meetings in this place. It's crazy, but typically what happens is the Drainage Board comes to us with developments and the developers have to prove that they are improving, they have to prove that they are improving the drainage around an area before we will let them develop. So, if there's a development that takes place here and there's hard surfaces, pavement, and all that, they've got to prove that they're making the situation better, not worse for the surrounding area. So, as that takes place down the road you may want to come back to Drainage Board meetings and that, so.

Commissioner Tornatta: And, this is a rezoning, not approval for drainage.

Debbie Schwent: I just, when I heard, I just, I'm curious about what's going on, because unless you're right, unless you come to every meeting, you don't know everything.

Commissioner Tornatta: Sure, and they will actually send you a letter to tell you if he's planning on doing some development. They would send you a letter and let you know that there will be a meeting and when the meeting will be.

Debbie Schwent: Okay, so we'll be sent a letter—

President Nix: Well, that's not necessarily true, because once this rezoning takes place, you basically are at liberty to do the developments. I don't know if she would be notified after that point.

Debbie Schwent: Was I supposed to be notified that he was rezoning this?

President Nix: If you're an adjacent property owner, yes.

Debbie Schwent: I live just a few houses down, yeah.

President Nix: Okay, if you live a few houses, no.

Debbie Schwent: So, you're not?

President Nix: You have to be an adjacent property owner.

Debbie Schwent: Okay.

President Nix: Your property has to abut that piece of property.

Debbie Schwent: Okay. There's just, you know, a lot I don't know. So, I just wanted to ask. Thank you.

President Nix: Thank you. Okay, Mr. Miller, a summation at all?

Mark Miller: No, Mr. Nix, thank you.

President Nix: Thank you. A motion has been made and seconded. It's been awhile, I forgot. All in favor?

Commissioner Tornatta: Yes.

Commissioner Korb: Aye.

President Nix: Aye. Opposed same sign. Roll call vote. Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: Commissioner Korb?

Commissioner Korb: Yes.

President Nix: And I vote yes. It passes. Thank you.

Mark Miller: Gentleman, thank you very much.

**Final Reading: VC-13-2007: Three I Properties LLC  
Address: 601 and 630 E. Boonville-New Harmony Road &  
12900 and 12920 Old State Road  
Request: Change from AG and R-1 to C-4 with UDC  
Action: Approved 3-0**

Janet Greenwell: The final petition that we're bringing tonight for a hearing is your docket number VC-13-2007, Three I Properties LLC. They are requesting to rezone the properties located at 601 and 630 Boonville-New Harmony Road and 12900 and 12920 Old State Road from agricultural to R-1, from agricultural and R-1 to C-4 with a use and development commitment. The proposed rezoning area is west of the intersection of Boonville-New Harmony and Old State Roads. It includes seven and a half acres north of Boonville-New Harmony, which is being proposed for the development of a new Schnuck's supermarket, and 1.8 acres south of Boonville-New Harmony Road. These sites are located along the 41 North corridor, which is planned for commercial and industrial development. They are within and adjacent to an area specifically designated by the comprehensive plan for commercial development. They are surrounded on three sides by rural, agricultural and low density residential uses. In December 2000, a C-4 zoning was approved for an eight

acre site at the northeast corner of 41, and a two acre site at the south east corner. Three I Properties is proposing to enlarge both these existing C-4 sites, extending the commercial development to the east. That will go to Old State Road on the north side. A use and development commitment is included as part of this rezoning petition, which prohibits billboards and some commercial, recreational service and storage uses. The commitment also addresses lighting, increases the required green setback adjacent to residential, provides for buffering along the north property line, and part of the eastern property line along Old State Road, and prohibits truck access on Old State, for deliveries. A copy of the use and development commitment was included with our staff report. The petition was recommended by Plan Commission for approval with seven yes votes, one no vote and two abstentions.

President Nix: Thank you, Janet. Is the petitioner here today?

Gene Hahn: Les is not here yet. Do you want us to go ahead?

President Nix: If you could please step up. For the record, if you would, please state your name.

Gene Hahn: Gene Hahn. Our attorney, Les Shively, is not here yet, who was supposed to be presenting this. Unless he shows quickly, I can go ahead.

President Nix: If you could just walk us through this?

Gene Hahn: Sure. We, as they said, own part of the property out there that's been zoned C-4 since, about seven years now. We want to expand that area to include what she shows here on the map. We have been working with Dave Fontana here with Schnucks now for several months to put a Schnucks store at that location, along with a couple additional....what do you call them?

Dave Fontana: Retail spaces.

Gene Hahn: Retail spaces that adjoins, very similar to the one at Green River Road and Lodge, or Green River Road and Lynch Road. It will look similar to that. There will be about three out lots for other uses that compliment what Schnucks does. We are looking to put a, by the request of the County Engineer, a driveway on to Old State Road. It will be....point to it.

President Nix: There's a pointer up there.

Gene Hahn: Oh, okay.

President Nix: Here you go. Mr. Hahn?

Janet Greenwell: There's one up there.

President Nix: Oh, is there? Oh, okay.

Gene Hahn: Okay, the driveway will be about in this general area here.

President Nix: Mr. Hahn, if you could, point that out again for me?

Gene Hahn: Sure.

President Nix: Okay, thank you.

Gene Hahn: Okay.

President Nix: Before we go any further, how current is this shot here? Janet?

Janet Greenwell: 2005, I believe, October of 2005.

President Nix: Okay, thank you.

Gene Hahn: The other corner, of course, that's C-4 as well on the southeast corner, and the additional land next to that compliments what else is being done out there. We have agreed to run a berm along Old State Road, along with some trees and etcetera to help as a buffer there. The property to the north and adjacent to this property, the property owner has given us a letter stating that they are indifferent. They're not going to support us, and they're not going to be against us on doing that. So, they're okay with that rezoning.

Commissioner Tornatta: That's a berm?

President Nix: That's across this north end here?

Gene Hahn: The berm will be all the way down through here. They requested actually a fence up there, rather than a berm. We'll do either one, but that's the neighbors requested a fence. So, we would give what's required from us, and, of course we have to go before site review anyway. So, as we get to site review and if they want us to do a berm, we'll be glad to do a berm. If the fence is satisfactory, we'll do a fence.

Commissioner Korb: Could you do both?

Gene Hahn: Pardon me?

Commissioner Korb: Would you do both?

Gene Hahn: I'm sure.

Commissioner Korb: The reason I'm asking, I'm looking at what they've done at Target on the east side.

Gene Hahn: Yeah, right. I'm familiar with that.

Commissioner Korb: But, you'll commit that to writing, right, Mr. Hahn?

Gene Hahn: Absolutely.

Commissioner Korb: Great. Thank you.

Gene Hahn: Absolutely. The berm, I mean, Dave's brought a picture of one of them they've done at other places. It will be very similar to the one that he has with him here today. I think all of you are aware that we have improved the New Harmony, Boonville-New Harmony Road to six lanes, with a new left hand turn lane. That made it not only safer for everybody out there, but, of course, the school busses used to have to get out in the middle and hope nobody hit them until they finally got through

there. Now, they do have an arrow that can get them safely across the highway. We also had to, they extended the acceleration lane. The acceleration lane from here over to there, we changed the stop lights, we improved the road down through here as far as we could, till we ran out of area where we didn't own it anymore. We extended that left turn lane here that turns into the property. So, that pretty well covers everything. There is some concern I know over the past about this road here, that you get some people that run that stop sign. I don't know how we'll either contribute or hurt that. I think that's a police matter to get that under control. I don't think we can do that. But, that pretty well sums it up, I think.

Commissioner Korb: Mr. Hahn, is there some, if I remember correctly at the Area Planning Commission, you're also planning on extending the improvements to the corner?

Gene Hahn: Are you talking about here?

Commissioner Korb: Yes. Not there, but go there, come down, come down, come down, come down, keep coming, go left. That area right now is not improved.

Gene Hahn: That is not improved, that's correct.

Commissioner Korb: I'm sorry, about the roads, I'm talking about the road.

Gene Hahn: Oh, the road, yes. Yes, we'll do some improvements there as we acquire property to where we can do it.

Commissioner Korb: Got it.

Gene Hahn: Okay.

Commissioner Tornatta: Then, where would a truck drive in, if there was a truck?

Gene Hahn: Okay, all truck traffic, or at least anything that's above 30,000 pounds will be coming in using this driveway. They'll come in here to unload, and coming back out the same way. You know, you'll get pick up trucks and so forth that will use that, and your smaller delivery trucks that you might have, like a Frito Lays and some of those you'll see around, the little vans. Anything that's larger will be using this street here that extends and goes back to the Schnucks store. Did you want to say anything?

President Nix: Mr. Shively, you're going to get docked today.

Dave Fontana: He can pay me.

President Nix: You might as well just go on home.

Les Shively: (Inaudible. Not at microphone.)

Dave Fontana: My name is Dave Fontana, I'm Director of Real Estate Development for Schnuck Markets, based in St. Louis. I'll just, if you don't mind, I'll just briefly walk you through the conceptual plan. We were asked to come up with a conceptual plan when we met with the neighboring residents to this property. I guess, that was back maybe in August was when we first met with them. As Gene said, we have the property under contract, contingent upon, I guess, about half of the property being

rezoned, which is in front of you tonight. The frontage, as you call it on Highway 41 is already zoned commercial, and, basically what we're looking to do is to square off the piece so that we would have 15 acres, which would allow us to develop here. I can just briefly talk about this, this is New Harmony Road here, Boonville Road, Highway 41 out there. What we're talking about is having the supermarket facing Highway 41 with out parcels out on 41. The corner, which I'm sure you're aware of is the Bank of Evansville, I guess, has just recently opened on the corner. So, while they'll be integrated into the rest of the development of the shopping center. That property, obviously, is not something we're going to purchase. In addition to the supermarket, which the one we show on this plan, the 63,000 square feet, which is similar to the store, as Gene mentioned, that we opened, the most recent one in this market on Green River Road, just south of Lynch. Then we're also going to be building a similar store in Newburgh, replacing the store that we have there now. That store and then an additional small shop retail space of about 15,000 square feet. I should have mentioned, in addition to being in the supermarket business, our company also is in the shopping center development business. So, we have about, we have developed over 50 of the shopping centers that our stores, or the anchor tenant of our shopping center. So, we'll be doing the development/management of the shopping center and the leasing as well, assuming we go forward with this in the future. The trucks, as Gene said, comes in off of Riley and circle around the perimeter of the shopping center, so that we don't cut across the front of the store. We try to avoid that, if possible. Our docks are back over here, and they would exit back out that way. We would sign the driveway on Old State, it's simply there, two reasons, probably the most important is for emergency vehicle purposes. We really, I can't think of a shopping center where we don't have multiple entrances, at least two entrances. You know, if something were to happen at the main entrance where an emergency vehicle couldn't get in, we would have to have access for that vehicle. Also, for the traffic coming off of Old State. It allows people to get into the shopping center without having to go through the intersection and down off of New Harmony to get access. So, it's a more convenient access for them. So, that's why we have proposed that entrance there. But, the large trucks need the large, the width lanes on Riley, the main entrance, and New Harmony in order to come and go, that's the way they'll come and go. If you have any questions, I would be happy to answer them.

President Nix: You had mentioned something about retail space. Is that that light color there just south of the building?

Dave Fontana: Yeah, uh-huh.

President Nix: It's not typical, you usually have a whole lot more retail space in your stores. What is there, two or three, how many?

Dave Fontana: That's about 12,000 square feet.

President Nix: Okay, it just looks small compared to the rest of it.

Dave Fontana: That's about average for what we would do. It just depends on the market, but that's a good amount that we lease with tenants that are compatible with the supermarket.

Commissioner Tornatta: Is there a retention pond that we have to displace?

Dave Fontana: Yes.



Commissioner Tornatta: What are the thoughts on that?

Dave Fontana: Well, there is a small, we're showing detention here, there is a small pond that would be, obviously, taken out, and it sits right about here. But, we'll have full on-site detention for this site.

Gene Hahn: I guess, the other thing that's notable is, of course, there will be at least about 120 employees out there, just in the Schnucks development, not including the out lots and what, I think, Bank of Evansville now has, and things of that nature. So, it will be a nice project for Evansville. We have the opportunity to sell off the front lots and just leave a bunch of the, three buildings sit out in front. David and I elected not to do that. We waited until we had a nice project that was comfortable for other things in Evansville that people could be proud of, and I think we'll do a great job for that community.

Commissioner Tornatta: How many other locations have you had, have you had a lot of remonstrance from a lot of the other locations that you've seen? Or what have you normally come across from the Schnucks locations?

Gene Hahn: I have not seen any. I mean, David, you can probably answer that better than I can.

Dave Fontana: I'm sorry, I'm not--

Commissioner Tornatta: I'm just kind of curious, now that you kind of have a track record, you have 50 or so developments that you've done. Do you find that people are pretty comfortable now with your set up? Or do you find that you're still banging heads?

Dave Fontana: Well, every development's different. Sometimes folks, and a lot of times we maybe have residential even in closer proximity than here. In other words, around more than one property line like we have here. We could have it two or three sides of us. It just depends. I mean, usually, at the end of the day, folks are happy with what we've developed. We think we do quality development. We have, I think there's a real benefit to having the owners of the shopping center also being the owners of the anchor tenant in the shopping center. Because when somebody, if there's trash that needs to be picked up, or whatever the issue is, you go in and find the store manager and he has to respond to his customers. We're very cognizant of those customers and want to keep our property in good shape. But, you know, there obviously are developments where we have folks who would prefer that we not be there. It's just kind of the way it is sometimes when you're suggesting change. I do think this corner is, with Highway 41 being the main access that it is, and with the development on the other corners, I think certainly is one that we would consider prime for commercial development. Obviously, we're following the growth, the housing growth in that area, and we, our market studies have shown, and based on the additional housing that we expect to see up there based on what's been zoned and approved.

President Nix: Thank you. Mr. Shively, good afternoon.

Les Shively: I'm sorry. I guess, my message didn't get to the Commissioners. I was at a jury trial. I'm sorry about that. Okay, thank you. I would just add the following to what has already been presented, and, I think Mr. Fontana said it very well, this is a map that was done back in the '90's by Morley and Associates Engineering. It

identified all the new lots that have gone on line since the early '90's, at that time it was roughly maybe 1,500 lots. I've updated it a little bit, with the help of staff, trying to fill in lots that have gone on line in the last four or five years. We're now up to over 3,000 new lots out there. I think this is one of Mr. Fontana's favorite lines, Schnucks follows the rooftops. This is precisely what we're doing. If we can focus on the area, at least of close proximity, Carrington Meadows, Creekside Meadows, Asbury Point, that's over 500 lots just clustered right here. What I've done, it's a little hard to see from there, I've made a copy of the center of this map which is where the Schnucks store would want to be, to give you a better idea of the multitude of lots and residents that will be served. I'm sure they already pointed out to you that there's commercial already, of course, across the street. There's also commercial up at Inglefield Road and 41 on the east side. You can also see from the map that I've given you and this map, almost all of these new homes are east of 41, which means that whatever traffic is generated is there. It exists, and people are wanting to go to commercial locations that are over here (Inaudible. Stepped away from microphone). So, really, the traffic situation is already there. It's because that's the new (Inaudible) residential in Vanderburgh County.

President Nix: Mr. Shively?

Les Shively: Yes, sir?

President Nix: Are you through for right now?

Les Shively: Yes.

President Nix: Okay, thank you. Okay, at this time I would like to ask if there are any remonstrators?

Commissioner Korb: That's a joke, right?

President Nix: I'm teasing. Please state your name for the record.

Steve Bohleber: Good afternoon, Commissioners. I'm Steve Bohleber, and I'm an attorney representing the group of citizens in the neighborhood, many of whom are here this evening who are opposed to this proposed rezoning and encroachment upon what has been a quiet, rural lifestyle for many of them for the past 50 years. There's a confusing record in this case, but this is, in fact, the third attempt to rezone substantially the same area since 2001. The area that's depicted by this rezoning and properties between U.S. 41 and Old State along Boonville-New Harmony. The first two, which were voted on by this Commission in April and December of 2001 respectively, were rejected by this Commission. A law suit entailed and went to the Court of Appeals, and the Court of Appeals affirmed this Commission's ability to regulate land and enact zoning ordinances and change them within a broad range of discretionary powers. To understand the history of these—

President Nix: Mr. Bohleber? If you could hold just one second, we need to change the tape here.

**(Tape change)**

President Nix: Okay, go ahead.

Steve Bohleber: To understand the history of these various attempts, I think it's appropriate to peruse the Commission meeting minutes of April 19, 2001 and December 17, 2001. I think those have been provided to you by both Mr. Shively and myself, either through the Plan Commission minutes or through direct mailings. I would like to incorporate all those into the record, and I hope you've had an opportunity to examine them, because I do think they show you the history behind all of this. The April 2001 meeting contained detailed reasons why the neighbors opposed this rezoning at that time. My neighbors belief is that most of those reasons are just as valid today, despite the intervening passage of time and changes that have occurred. This first attempt was defeated by the Commission by a unanimous vote. Later in 2001, the petitioner was allowed to refile a different plan. Input was sought from the remonstrating neighbors. I will point out that throughout this process Mr. Hahn and Mr. Shively have been very open and candid and have always spoken to the neighbors in an attempt to resolve this matter amicably. The neighbors were contacted in that second attempt in 2001, and an understanding was reached. I don't want this Commission to think, however, that simply because an accord was reached in 2001 that that somehow makes their objections today suspect. Nonetheless, despite the agreement, the Commission still voted to deny this rezoning by a two to one vote. In 2001 there were an active group of neighbors, the most (Inaudible) of which was fellow named Ron Grover who has since left the area. He was able through lots of debate and argument to convince the neighbors that compromise was good. So, that did take us to a situation where there was a plan that was agreed upon with a lot of stipulations and restrictions in 2001. Nonetheless defeated by the Commission. The 2007 plan was suggested by the petitioner at the Plan Commission to be a better plan than the 2001 plan. My clients disagree. That's why 105 of them signed a petition in opposition to this plan that was presented to the Area Plan Commission. I think that will become a part of your record by operation of law. To compare the plans, you'll see there were many differences that we think provide less protection to the neighborhood. As is pointed out in the staff field report and revealed by the ordinance itself, there are 174 possible uses in a C-4 zoning. That means once zoned C-4, unless restricted by a use and development commitment, any one of those uses could be changed without further input from this Commission, or any neighbors. The 2001 use and development commitment, excluding use group 19, as I count it, prohibited close to 50 of those 174 uses. The one presented here today only prohibits 22, excluding those in use group 19, which includes circuses and a variety of other unusual things. The 2001 plan also preserved an agriculturally zoned buffer along Old State Road. It required that a traffic impact study be done, and which was in fact done by the petitioner at that time. It prohibited outside storage and/or dumpsters that could be seen, visually seen by adjoining neighbors. It provided 50 foot of green space, a 12 foot berm, a solid line of trees. Now, while some of these issues are addressed here, they're not nearly as extensive or as protective as in 2001. On top of the use and development commitment in 2001, the petitioner agreed to a private covenant prohibiting changes in the zoning for 35 years along the northern portion of the property, and 15 years along the south. That was a commitment that they, a covenant that they would have recorded in the chain of title, had the rezoning been approved in 2001. I think that's significant because, as you all are aware, once this use and development commitment is adopted it can be amended by a new rezoning process, and other uses can be added. The significance of the restrictive covenant would have prevented that for a period of time. So, this is a different plan, with different neighbors, with, while many of the same concerns, there's also some different concerns. I think, if you categorize my clients opposition to this rezoning, there are six compelling reasons, and six compelling concerns they have for their opposition. One of the most significant, and I think that's already been mentioned by many

people is traffic and safety concerns. There's no question that Mr. Hahn has made some improvements along Boonville-New Harmony between U.S. 41 and Old State, but the remaining arterial roads, to the north and south and east, being Old State Road and Boonville-New Harmony, remain rural, two lane roads. U.S. 41 and Boonville-New Harmony Road remain among the more dangerous intersections in our county. A concern the neighbors have is in addition to additional traffic along these two lane roads, is the ability to access the site off of Old State. I understand the petitioner is going to attempt to restrict truck traffic, but they are not police officers. That will be used. It's certainly not going to address the hundreds of non-commercial vehicles that will probably be accessing that site off the Old State Road entrance. County Engineer John Stoll, in the staff field report did note this strain on the infrastructure. He says, "It is obvious the development of this land could require additional improvements on Boonville-New Harmony and/or Old State. The extent of the improvements would depend upon the type of land uses constructed on this site." So, it's an uncertain that exists as to what type of infrastructure improvements might be necessary to accommodate this increased traffic. But, I think it's obvious to all concerned, including the petitioner, because they're good business people and I love Schnucks a lot myself, they want traffic to increase, they want business. So, it's obvious to everyone concerned, the traffic patterns are going to be changed. Safety issues will need to be addressed. In the absence of careful planning, I think this is not only going to be a burden on the neighbors, but also a burden on the taxpayers to improve the roadways to accommodate this increased traffic. A second concern is one of pure aesthetics, and, you know, everybody is concerned about things changing, not being the way they are, but, as I've pointed out before, and I think that some of the neighbors that are going to follow me and address this Commission will tell you that this area has long been a quiet, rural neighborhood along Old State. It's mixed agricultural and residential uses. This incursion this far away from 41 is going to create some problems for them from a purely aesthetic standpoint. There are drainage concerns. I realize that this body sits as the Drainage Board, and one of your responsibilities anytime there is a development is to make sure that the drainage issues are addressed. The petitioner is employed, you know, great people to deal with drainage issues. But, nonetheless, there's going to be a lot of pavement out there. Pavement causes runoff. We've already established that an existing body of water on the property is going to be displaced. The natural detention capacity of that is going to be eliminated, and if not properly replaced, is going to create some drainage difficulties. If you look back in the minutes of 2001, some of the long time neighbors talked about flooding issues out there in that area. I think those are omnipresent, if, in fact, we have some deluges down the line. Another concern, or number four is light and noise pollution concerns that the neighbors have. Pushing vehicular traffic off of U.S. 41, on to Old State at this site will degrade their quality of life. There's no restriction on the hours of operations at Schnucks, and I know, since I shop at Schnucks that locally they open at 6:00 a.m. and close at 12:00 midnight, and I think that's their immediate plan here. Without restrictions there's nothing to prevent a 24 hour a day operation. As good business people, I'm sure they want to leave that option open. But, that's a concern to the neighbors. A 24 hour a day operation is going to bring noise and light and other intrusive things into this neighborhood that have never been here before. I guess, if you try to summarize all of this under one concept, what is going on here and what is planned here is something that land use regulators have called urban sprawl in recent years. That's become one of the big problems for land use planners as we approach this new century, as people want to get out of the downtown areas, they want to get out of the center cities, and they want to move out into the suburbs. You know what, my clients did that 50 years ago. So, you know, but realizing now that we lose a lot in the process. If you define urban sprawl as dispersed

development outside of compact, urban and village centers along highways and the rural countryside, that's exactly what we have here. This is nine miles from the center of Evansville, a mile and a half from the historic town of Darmstadt. The problems with urban sprawl is they create infrastructure problems. The need for infrastructure improvements at tax payer expense is increased. We're seeing infrastructure problems in our center city now. Sewers are crumbling, roads are degraded, difficulties are everywhere. To ignore those when you have to expand those infrastructures out far away from the center of town is not considered good planning at this point. You know, as I've mentioned I think in my correspondence to you, and at the Plan Commission meeting, if there was an issue occasions last election, it was the sewer issue. We all are addressing a crumbling sewer situation in Evansville, particularly in the downtown areas. It's not a time to start, as a community, be it city or county, to address additional needs nine miles away. Tax bases are shrinking because of restructuring at the state level. Local government is having trouble keeping up with its existing infrastructure. To expand the taxpayers burden of providing infrastructure to remote areas is not good business, it's not good government, and one reason that urban sprawl is a great concern for land use planners in the 21<sup>st</sup> century. So, you know, I guess if you summarize the whole area, the whole situation, it can be capsulized with the concept of urban sprawl. I think these were addressed by the comprehensive plan as well. In the executive summary of the comprehensive plan warns against this type of stuff. A commercial action plan in that executive summary says that the objective of the plan is, "To ensure efficient and appealing commercial development in appropriate areas at minimized, adverse impacts on surrounding property, the road network, and utility systems." The policies of that action plan include mandates "To direct new, commercial development into existing commercial areas before rezoning new land. To encourage compact commercial areas, and where possible avoid newer, expanded, inefficient development. To discourage spot zonings of property for higher intensity volume commercial uses in residential areas." It goes on to say, "That when new commercial sites are developed adjacent to residential areas, schools, churches, public parks and the proposed greenway, we should encourage expanded landscape buffers that exceed the minimum setback requirements of the code." We think this proposal is not good for the neighborhood, and it's not good for the county either, not good for the taxpayers. We think it's bad zoning. We think that the increased taxes of this development, the increased employment will cost far more when we come to infrastructure improvements for roads, for sewers, for law enforcement, for other things that are going to have to be shifted out in that area. For that reason, my clients have respectfully asked you to consider voting no, as the Commission did in 2001 on two different occasions. I would like to turn the podium over to a couple of the affected neighbors who have a far more eloquent approach to this than I do. Thank you very much.

President Nix: Thank you, Mr. Bohleber. Good afternoon. Do you want to pull the mic down to you there? There you go.

Mrs. Earl Wilson: Before I start this is a letter that I sent.

President Nix: We should have a copy of that. Okay.

Mrs. Earl Wilson: And then here are some pictures that I will talk about (Inaudible).

President Nix: Okay, if you could go back to the microphone and state your name and your address please for us. Thank you.

Mrs. Earl Wilson: I am Mrs. Earl Wilson. I live at 13250 Woodland Lane in rural Vanderburgh County. I have given the Commissioners a couple of photos that I took this afternoon, and I took these photos from the backyard of my neighbor, Nancy McCormick, who will speak next. I say from her backyard, and that's across Old State Road. As you look at the photos, notice that I've put an arrow in that small lake there, that's where Schnucks would like to build there store. Then to the north of that you can see the subdivision called Golden Hill. Mr. Shively sort of represented that the people in Golden Hill didn't mind this rezoning, and he's wrong about that. They all signed our petition against it, and I have two representatives of that neighborhood, Mabel and Jim Blythe, here tonight to represent Golden Hill. Right back here. So, I would like to remind you that the comprehensive plan for 2004 to 2025 did mention the 41 corridor as an area for commercial development, but at no point does it mention that that should go to Old State Road. That's where the sticking point is for us. When in 2001 we had the agreement with them, this area, if you can see what must be a lake in that area, and it's the one that I have pointed out there will be drained and filled in for Schnucks to build the store there. So, our agreement was going to be that just the very tip of that lake, if you can picture this, would be in the commercial area, and they would leave the rest of it from that, and I say the tip, I mean the tip going this way. Just the very corner of it was going to be included in the commercial development. That means, as you can see, there would still be a lot of green area, and that was the agreement that we agreed to, that was supposed to run with the land if they got the rezoning at that time. So, you can see it's quite a bit different.

Commissioner Korb: Are you referring back to the 2001—

Mrs. Earl Wilson: 2001.

Commissioner Korb: —Mrs. Wilson?

Mrs. Earl Wilson: In December, uh-huh. Most of that land, except that very corner, which is not included this time in their wanting to rezone, was to, if they were successful in rezoning that would be left green and would not be, you know, commercial for 35 years. You know, that was going to be way after I was dead, but it didn't, well, that was 2001. Now, people who regularly use these intersections, both the four way stop at Boonville-New Harmony and Old State and the Highway 41 and Boonville-New Harmony intersections know how crowded these are. Especially during the work week as people from Toyota and PPG and other plants up there go to work and then when they come home again. We have already spoken about the traffic impact study that was done by Bernardin Lochmueller in 2001, and they projected that by 2005, all of the turn lanes on Highway 41 and Boonville-New Harmony Road would be, and this is a quote "marginally acceptable". That would have been by 2005. Now, when there's a lot of traffic on the Highway and on Boonville-New Harmony Road, the turn lanes are filled up and people have to wait in the regular traffic lanes. That's already true. So, we really don't need more traffic out there. I would like to say that at this intersection, within a half mile of the intersection of 41 and Boonville-New Harmony Road, there are seven crosses where seven fatalities, four right at the intersection of Boonville-New Harmony and 41, and the other two on either side with, as I say, all within a half mile. So, it really has been, in the past, a dangerous intersection. When we have big events out at the 4-H Center, you all know the Frog Follies, and that's a whole weekend, and the Vanderburgh County Fair lasts a whole week, and traffic is truly horrific then. I would like for you to look at the diagram or the picture up there and picture all these Frog Follies people and the people going over to the Vanderburgh Fair coming from the

east, going through the four way stop, and as they would be going, people would be coming from the west and trying to turn in, trying to turn left into this development, if it should be allowed. That is going to make it truly dangerous. So, we always talk about the school busses, and this is mainly a residential area, so, you know, more traffic really is bad for that reason also. I've given you twice the traffic counts on both Boonville-New Harmony and Old State Road, and that's now, and that was in August not on a special day, just a day in August. So, I would like to close by saying again what the comprehensive plan tells us would be a good thing, and that is when there is already land available and rezoned properly in an area, that that should be used first before they try to rezone. That's what the comprehensive plan says, and within a half mile of where we live there is land available, it's zoned commercial, it is way more than any shopping center would need for a number of stores. So, we say, you know, use that first. It also would be in an area of less traffic, because it doesn't have the 4-H Center, it doesn't have Buehler's, and it would, as I say, it's there, so, really we wonder why they want to cram this shopping center in an area that's already dangerous. Thank you.

President Nix: Thank you, Mrs. Wilson.

Mrs. Earl Wilson: I would like to introduce my neighbor, Nancy McCormick, just for her to say what she thinks.

Nancy McCormick: Ditto. Is that good enough?

President Nix: Couldn't have said it better, huh?

Nancy McCormick: We all feel the same way. I e-mailed each of you just yesterday I think it was, and I did in intentionally, had it late. This is not needed out here. It's not needed. I can understand the money and what it will mean for Schnucks and all, and guess what, I shop Schnucks. Say that five times real fast. I go over to Green River Road for this. I'll go where I need to go, but we have a Buehler's, we have all the banks now, but you've got to understand, on these roads out here, on Old State Road watch the school busses in the morning and the afternoon people. I'm telling you, and it's a narrow road, there is plenty of room like Jo said, up 41. Since everything is moving north, move Schnucks up. You'll get Haubstadt and what are all of those little towns, Poseyville, you'll get a whole bunch of them up there. You really would. But, I just have to say that my husband built his home, well, our home now in '54 on Woodland Lane. We're still there. You would need to come out and see our area, it's a lovely area, we don't want all this mess out there. Thank you very much, but first Tom Blythe has a few things he would like to say.

President Nix: Thank you.

Tom Blythe: Did she say a few? My name is Tom Blythe. I'm an architect, licensed 21 years in the state of Indiana. I'm here speaking basically on behalf of my parents, James and Mabel Blythe, they live in Golden Hill Estates. They're the second house north of this proposed development. We respectfully ask that each of you deny this rezoning petition. We appreciate the use and development commitment and that the developer, Schnucks, has pledged to be sensitive to good design, but it's our sincere belief that if this rezoning is approved and the property is developed as proposed, now, I've got an aerial photograph that's maybe a little bit wider range than what we have on the board there. So, as it was, somewhat (Inaudible), it will have severely negative consequences for our neighborhood. We are opposed for the obvious reasons of increased noise, light pollution, increased traffic, heat island effect of

buildings, parking lots, decrease in property values. We are also opposed for less obvious reasons, but I've tried to kind of take some notes here. I don't want to hit on things that you gentlemen have already heard. But let me start out, the first item would be increased noise. Semi truck deliveries, day and night, dumpsters being emptied, back up warning signals, a 407 vehicle parking lot, horns, public address systems, and snow removal operations. These sources of additional noise combined with hard paving, building and roofing systems which reflect and amplify these noises will greatly increase the noise in our quiet neighborhood. There should be no challenge to this fact, it will be noisier. This is a far cry from the sounds of the current zoned compliant use, a country meadow in the life of a rural pond with its sounds of frogs, crickets, ducks, geese and wildlife. I had to add that in there. Light pollution. Observe the nighttime glow of any area of recent development, the pale amber nighttime sky that marks commercial development like a halo. Commercial development needs to be seen, both day and night. It's part of their marketing and advertising. Signs are lit, parking lots are lighted, buildings are illuminated, their current and prospective customers need to know they are there, they are open for business, how to find them and what they're hours of operations are. Commercial development to be successful must call attention to itself, both day and night. This is done by lighting. Illuminated signage and message boards. Just two weeks ago I went outside with my 13 year old daughter as we, for extra credit, to find comet P17, a (Inaudible) which exploded in October and is now visible as a faint fuzzball. This is homework. We could not have completed this assignment next to an illuminated 400 space parking lot and shopping center. We would have had to drive further out into the country, which is where we were. Commercial developments also have a need for another type of lighting, it's called security lighting, which allows, which lights a facility all night long. This property does not require extensive security lighting now. Think of it, I mean, just the term security lighting somewhat entails that there is an increased risk for security. I'm going to skip the increased traffic notes that I had here, because I think that's been talked about. But, I did want to bring up something to your attention, traffic entry and egress is being proposed from this area right here off of Boonville-New Harmony Road, plus we have an entrance that's going to be off of Old State Road right there. So, and that's going to be limited, there's no truck traffic on that one. So, we can say they have two, maybe realistically one and a half. You know, just kind of looking at some of the other Schnucks developments there, the north side store has six points of egress into their site, the west side store has four, the east side store has five, the Green River store has five. You know, so this one has two. I guess, the point there is that 407 parking spaces only from the Schnucks development is actually being funneled down to Boonville-New Harmony Road, which is at the low point between Highway 41 and Old State. We're not only recreating the problem that we have with the Buehler's grocery store, which is across 41 from this, we're actually making any even worse problem, because we've got a larger store, we've got more cars, and we've got development here and a parking lot that hasn't even been considered in the parking number. Heat island effect, this is a well published fact, when you replace ponds, grassland and trees with brick, mortar, pavement and roof, the microclimate of the surrounding area is affected. The term for this occurrence is referred to as heat island effect. The local effect of this development will be hotter temperatures in summer, as the buildings soak up and reflect heat during the day, and as the heat gained during this day is radiated back into the neighborhood sky at night. To the neighborhood and the sky at night. We are, however, concerned also that the loss of trees, shrubs and rolling hills will increase the openness factor, and that winds may actually increase also. That's a published fact also. So, the wind, the heat island effect is another thing that will be an impact on the neighborhood that we have here. There's been mention about the comprehensive plan, I don't know if you can see that right here,



but this is the property that is in the petition right now. There is a corridor along this neighborhood that is not proposed to be in the commercial development 2025 (Inaudible). I can pass that around, but it essentially reiterates what Mrs. Wilson said is that that corridor along Old State Road was not proposed to be part of any commercial development. We applaud the foresight of the planners who initially planned that to say that there would not be and that there should not be any commercial development there, and we ask this board to confirm the previous planning decisions and simply follow that plan as submitted and approved, without modification. Another thing that has been mentioned, but I think needs probably needs to be reiterated is increased runoff. Hard surfaces such as pavement and roofs that increase the flow rate and discharge of storm water are indicated on the development plan from setback to setback. A small detention area of questionable size is also shown. I guess, the point there is we've got just about setback to setback pavement. Field that was there, green space is now paved. The Golden Hill, oh, this development will increase storm water flow and discharge. The Golden Hill lake overflows into the existing lower lake and ditch along an existing drainage easement that actually comes from the spillway here, underneath the drive and down into the lake right there. That's an existing, established drainage easement that we have there. Careful planning and detention will need to be implemented. Site drainage is currently in check with the pond and the green space and ditch that currently exists. The one main concern though is, what I've pointed out on the board here is our development is right here, the flood plain, of course, we're high and dry up here on this development, but two major ditches to the east and to the west of our proposed site both flow into the community of Hillsdale. I don't know if you're familiar with the community of Hillsdale, most of that is within the flood plain. Now, this site (Inaudible) won't cause extra flooding down there, but I think it's something that needs to be addressed that the detention, the retention of the water flowing off of that site is something that will need to be contended with down here in Hillsdale. That's a low lying area, and that's where the creek actually levels off. We don't have as much drop in elevation starting at Hillsdale. Want me to stop? I'll keep going. The plan, I want to talk a little bit, maybe more just about the plan, which we've taken their plan and that's on the aerial photograph up there.

President Nix: Mr. Blythe, before you continue, could we get a show of hands of how many more people would like to speak? Is there anyone else? Okay, maybe if you could, I didn't want to try to limit anybody, but if we can keep this thing moving please.

Tom Blythe: I'm getting there. The plan far exceeds the minimum lot coverage of 75 percent. If you would look at the plan, there is new hard surface, as I said, pretty much from setback to setback. We've determined the lot coverage of about 85 percent on the conservative side. It may be closer to 87 percent. That's with the plan that's been submitted with the packet. That plan barely meets the minimum parking requirements for a commercial building of 74,900 square feet. The 407 parking spaces is right there. So, it's as if the desire was, and I know we're talking about, you know, it's a very preliminary plan, but to pave almost everything and show a detention basin on the plan so that we know it's thought of, but to put the biggest building possible that we've got here. I think Mrs. Wilson said it right, we're trying to cram a lot building, a lot of parking lot into a small site that's very hard, really, to get into. You know, it would be wonderful if it was a much smaller building that didn't have the parking requirement. We could back it off of Old State Road and not have to worry about a 407 space parking lot. Now, the final thing that I wanted to talk about, the building which is 74,900 square feet is being built over this lake, that has been superimposed, I mean, the building pretty much is right in the middle of the

lake. To accomplish this there will be significant earth work expense and/or significant foundation expense. Natural earth cannot be put back as dense and compact as Mother Nature has put it there. You can use piles, or piers under the columns, but the floor still typically bears on grade. A geo-technical report–

President Nix: Mr. Blythe?

Tom Blythe: Yes?

President Nix: Could you hold just a second please? We need to change the tape again.

**(Tape change)**

President Nix: Okay, sir.

Tom Blythe: The geo-technical report should state how much settlement you could expect in slabs and foundations. Probably the least desirable situation is to have the building sited on a combination of natural soils and engineered fill, creating a greater probability of what's called differential settlement, where parts of the building settle more than others. So, it's expensive to build over a lake. If I may just add a, you know, just a couple of comments that, I mean, really that corridor, that corner is very important to the neighborhood. It's something that should be addressed. The drainage off of the upper lake, through this site, you know, into a retention pond that's down here probably needs to be, I mean, very well thought out, because where they're putting the detention pond right here is actually kind of on the high end of the site. It's not right here at the low end, which would be right there. So, and I know you had probably gotten a letter from my parents also, and they failed to mention in there, I believe, that I said you probably should invite each of the Commissioners to come over and sit on the front porch and drink a cold beer in an evening and enjoy the neighborhood as it is right now, and kind of see what they cherish. So, I apologize for going long on you here, but it is something that we do wish and hope that you would vote this petition no.

President Nix: Thank you, Mr. Blythe.

Carol McClintock: Good afternoon. I'm Carol McClintock. I am a broker/associate with F.C. Tucker/Emge Realtors. I am speaking on behalf of the petition. I couldn't tell on your agenda where I should come. So, I'll just take a couple minutes of your time. I was asked to come here by some of my clients that live out in this area. Their concern is their inability to get quickly to, in their opinion, places that they would like to shop, the North Green River Road Schnucks, in a timely fashion and with gasoline being three dollars a gallon. Last year, as a realtor, I relocated 41 families to Southwest Indiana. Just one realtor. Thirty seven of those families moved to Warrick County. The reason that they moved to Warrick County is because they go out, they see the shopping along 261, along the Lloyd, they know that they will have easy access to shopping. There are some of the same great neighborhoods on the north side that are out in Warrick County, and we're really putting our current homeowners that are trying to sell their homes, builders that would like to continue to develop the north side in a really bad position, because they are competing against more convenience in Warrick County. So, we're sending all those taxpayers to Warrick County. So, I'm not great at math, but I did a little bit of math, so, if those 37 people had all purchased a home in Vanderburgh County, and they paid an average of \$3,000 a year in taxes, that's \$111,000 a year times ten

years, there's another million dollars to spend on schools, on road improvements, on parks, and all the things that all the taxpayers want in Vanderburgh County. We all know the taxpayers in Vanderburgh County want to make sure that their individual taxes, you know, do not increase. A couple of other things that I did want to mention, I'm reminded of the target rezoning when I was sitting in that spot, and heard many of the same concerns. Just two weeks ago I was out in the neighborhood that adjoins Target showing a home, and those property values have stayed the same, increased at the same rate as any other properties in Vanderburgh County, and those kinds of problems that individuals felt that they would have, just have not come to fruition. The other thing that I did want to mention, and I know traffic is a major concern, I can't visualize the individuals that I'm talking about driving up north on 41 and going on Old State and around and going in that other entrance. They are going to come up 41, turn right, turn left into the store and come back out the same way. They're not going to use that other path. It was mentioned that that was a very dangerous intersection. I'm sure you are all aware that the most dangerous intersection in Vanderburgh County, as reported on television and in the newspapers, is the intersection at Boonville-New Harmony Road and 57. We are absolutely pushing all this traffic over there to Green River Road, to go down Green River Road to go to the existing Schnucks and other shopping along there. Clearly, this should improve traffic in other parts of the county. So, I just wanted to share that with you. As many of you know, I used to work for Mr. Hahn, and now have moved to another company, but, I can say that one thing that I absolutely know about Gene Hahn is that if he says that he's going to do something, he is a man of his word, and he'll do what he promises. Thank you for your time.

President Nix: Thank you. Before, Mr. Shively—

Les Shively: Yes, sir?

President Nix: —any other remonstrators? Okay, thank you. Do you want to close, Mr. Shively?

Les Shively: I'll do my best.

President Nix: You know what, before that, let me just do this.

Les Shively: Sure.

President Nix: Are there any questions from the Commissioners right now to anyone about this?

Commissioner Tornatta: I did have just a couple. Do we know what the tax base is now on that property?

Les Shively: I can't tell you what the tax base is. I can tell you according to the current rate and the calculations provided by the Assessors Office that the proposed initial improvements will generate about \$241,000 a year in annual taxes.

Commissioner Tornatta: Okay.

Les Shively: If that's a response to your question.

Commissioner Tornatta: Okay, yeah, I mean, it, I was trying to get what that initial tax base—

Gene Hahn: I can help a little bit on this. Gerald, if I can remember right, yours are about five or six hundred a year. 450? So, there in that range, about \$450 to \$600 a year. For each one of them.

Commissioner Tornatta: Okay. So, at that point we would see a pretty significant tally. Okay, and then if you can, when you're talking about some of the things, if you can address just the ingress and egress and what were some of the thoughts from the developers about having the one entrance and the secondary entrance, but mainly the one entrance and maybe explaining how some of the other facilities have more entrances, and how they've developed around that.

Les Shively: Well—

President Nix: And, Mr. Shively, before you start your summation—

Les Shively: Yes, sir?

President Nix: —I would like to ask Commissioner Korb if he had any questions of anyone at all?

Commissioner Korb: And, really, just of Mr. Hahn, if I can. I heard a repeating theme through the remonstrators that the '07 plan is not as sweet as the '01 plan. The differences, Mr. Hahn, would be because of why? Just because the '01 plan wasn't considering a grocery store of this size?

Gene Hahn: That's primarily the biggest reason, yes.

Commissioner Korb: Got it.

Les Shively: Can I also add—

Commissioner Korb: Well, sure.

Les Shively: —in '01, six years ago, in fairness to the situation at that time and to the neighbors, we had no idea what was going to go there.

Commissioner Korb: Right.

Les Shively: Okay? We now know, and we're tailoring this development to that anchor, user and owner. I don't know if they made this clear in the beginning, I was kind of a little late, but, as you know, everything north, not only of what we're going to rezone, but also, it's already zoned C-4, everything north will be owned, that will be a Schnucks commercial/retail development. So, we know who the end user is going to be.

President Nix: Do we know, and maybe, Janet, you could tell me, the corner where the, the opposite corner, when that was rezoned and what the zoning was on that? Is there anyway to tell that without a whole lot of? Does anyone know that?

Les Shively: Which corner are you talking about?

President Nix: The opposite corner where Buehler's is right now. When was that rezoned? I'm just curious in my mind.

Commissioner Tornatta: '97.

Janet Greenwell: We can do that.

Commissioner Tornatta: Yeah, I think that was '97. You guys actually did that, correct?

President Nix: I wasn't involved in that. If there was a way we could tell before we go on, I would like to know that.

Commissioner Tornatta: October 20, 1997. It went from Ag to C-4.

Janet Greenwell: '97.

Commissioner Tornatta: Boy, I tell you what (Inaudible), pretty good.

President Nix: And, that's that whole corner, which would encompass, is there two banks right now? Two banks and Buehler's then? Okay, okay.

Commissioner Korb: So, that's the Buehler's there?

President Nix: And, at that time that was agricultural? In '97?

Commissioner Korb: Got it.

Janet Greenwell: Yes.

President Nix: Okay, thank you.

Les Shively: Before I sum up, there was a question, I don't know if it was Mr. Tornatta, or maybe Mr. Nix, or Mr. Korb, one of you three asked about the other locations and ingress and egress. Someone asked that question.

Commissioner Korb: Troy.

President Nix: Commissioner Tornatta.

Les Shively: Mr. Fontana can explain that, because I don't think that was accurately described a moment ago. He can be a little more accurate.

Dave Fontana: The locations there, we do have some of our other locations in town do have additional access points. For instance, the one on Green River Road, that shopping center is, has, I think about, that's not ours, we didn't develop it, Mr. Spurling did, has about 30,000 square feet, at least of retail, and has additional ground on the north end that he has the ability under our arrangement for additional retail to be built there. Then he has four or five out parcels out there along, so it's a bigger development. As is the one in the north and the west. So, it's substantially bigger. East, we share those entrances with some other properties. Here we're sitting on New Harmony is a five lane road, basically, so we think that it will handle the traffic coming out and in for the development. But, as the point taken because there were concerns about the access on to Old State, in fact, you know, folks didn't feel that we should have an access point there. We do believe, for proper dispersal of traffic that it is important that we have that access on Old State for, not for trucks,

but for cars and customer traffic. We think that will adequately handle the traffic there.

President Nix: Okay, are there any other questions from the Commissioners at this time? Okay, Mr. Shively, if you would, in your summation, I would like to, if we could limit this to three minutes, and I'll also give the other counsel a three minute summation.

Les Shively: Well, normally, Mr. Nix—

President Nix: Well, how about, is five alright, guys?

Les Shively: Mr. Nix, their remonstrance exceeded our presentation.

President Nix: You didn't get here on time either.

Les Shively: Well, sir—

President Nix: It would have went a lot longer, I'm sure if you had showed up.

Les Shively: I think we would have had it covered pretty well, sir. Also, if you get the, normally the remonstrators don't get the, we have the burden.

President Nix: If you would like, you have the time you need.

Les Shively: Thank you. I will not try to repeat things that have already been said.

President Nix: Thank you.

Les Shively: But, I think we need to put to rest this fiction of urban sprawl, because that's exactly what it is is fiction. In the 1970's I was an intern for Mayor Russell Lloyd. Russell Lloyd did something back in those days that everybody thought was somewhat peculiar. He ran sewer and water all the way up Highway 41, beyond the corporate limits to what is now I-64. He did that in anticipation that this would be, you talk about, someone was talking about applauding those who have vision, this was a person with vision. He saw this was the new frontier. This was where Evansville was going to grow, and it grew with PPG, it grew with Ameriquail. As you move closer to this property you have the plastics, Matrixx Plastics. In fact, for many, many years there was a section of C-4 at Inglefield Road just north of here that extends all the way from 41 to Old State Road. It also stimulated the new frontier for residential development. This is the fastest growing area. The population of the City of Evansville may be going down, but Vanderburgh County is not. I'm sure, I don't have to tell you something, you know that already. With that, 3,000 new homes out here. Schnucks follows the rooftops. The sewer's already in place. Old State is already carrying traffic for those new subdivisions, those new home sites, 90 percent of which are east of 41. So, the fact that Schnucks is going to create a traffic situation is not logical when you think of it this way. Again, I'm borrowing Mr. Fontana's line, they're coming to the rooftops. The people that will come to this store are the people that live in the area, in the neighborhood. That's why they're building there. They're not building out in the middle of nowhere. They're building there to serve those people, most of which live east of 41. Now, as far as traffic is concerned, Mrs. Wilson read to you the traffic impact study, and I don't think she did it intentionally, but she read that part of the report where BLA, Bernardin Lochmueller Associates, described the before condition, the before condition. That's

not the way it is today. In fact, Mr. Hahn, Mr. Remmert, at their expense, have improved Boonville-New Harmony Road all the way from 41 to the east part of their property line. They've also improved, with the direction and the permission and the blessing of the Indiana Department of Transportation, Highway 41, in particular the turn blisters north and south. Now, just because this rezoning is approved, it's not over yet. We'll have to go to site review. John Stoll has already informally started to vet this particular project, and no doubt there will probably be another traffic impact study required. John Stoll will have the last word. We've put it in our use and development commitment we're going to be at his mercy, so to speak, we think John's a reasonable guy, but he's, whatever he tells us we're going to have to do. It's probably going to end up being extending those improvements along Boonville-New Harmony Road to Old State, or as far as we can, and improving Old State where we're going to have our access point. There's no question about that. Mr. Stoll is already doing the preliminary studies on that, and we'll have to build it to his specifications. Now, with regard to the petitions that were signed, I doubt if you'll look at those 105 names you're going to find any names from Windemere Farms, or Covington Heights, or Cambridge, or Brentwood, or Cypress Creek, or Cambridge, or Brookview Heights, or Carrington Meadows. Those people want, you heard Ms. McClintock, they want to have retail services there in their neighborhood where they now live. Just like, as she compared it with the people in the Newburgh area. We met with the neighbors several months ago. We sought their input, and what we put together is a use and development commitment that is very similar, if not identical, to the restrictions that already exist on a part that's already been zoned C-4. Mr. Blythe mentioned that he would like to see a smaller building. During that long Tuesday evening, I don't recall one person taking issue with square footage. By the way, the plan that we brought here this evening is a conceptual plan, but we brought it to you to show you, and as we showed the neighbors that evening, that we are going to situate this building in such a way that the loading docks are not even going to be visible from any of these residential properties. That activity is going to be conducted out of sight. We also showed them how we were going to lay this. As you know, under your ordinances, we're going to have to submit a drainage plan. We're going to have to show how we're going to handle surface water, and how we're going to handle the surface water coming from other directions as well. It's important to note, not only won't you find those 105 signatures from anybody in the other subdivisions I just mentioned, it's important to note that the two property owners closest to this site have voiced no objection. The Breivogel's, who is the lot closest to the north, the tract closest to the north, and the Evansville Rescue Mission, who by the way has a substantial investment there. They intend to keep their property for their Camp Reveal operation, and they welcome shopping options for the folks they have there that live there, especially throughout the summer situation. With us this evening also, I know we're running short of time, is John Lamb of the Bank of Evansville. John, stand up. John has already made a commitment, at least, not him personally, but his institution has, the newest bank facility in Vanderburgh County, just opened this week at that corner. That's a good thing. They're there for the same reason Schnucks wants to be there, to accommodate the thousands of their customers that live in that area. Bruce Biggerstaff sitting next to him, for crying out loud, I showed that Carrington Meadows area that over, he developed that. There was a comment made a while ago that you can't compact dirt any stronger or any better than Mother Nature. Mr. Biggerstaff is an excavator, he'll tell you to the contrary, you can compact that earth. The fact of the matter is, we have and will address all these issues at the proper time. This is good zoning. This Commission, along with the Plan Commission this year, just designated the area starting north as an economic revitalization area to promote industrial and commercial development. That area, although it starts just north of us,

extends all the way over to Peck Road, which is in a residential, agricultural area. This is a good rezoning. We have met the concerns. This is good for the community. You've heard from a few people, but you as the Board of Commissioners of Vanderburgh County represent all of the 170,000 plus people of Vanderburgh County. This is a well thought out plan. Gene Hahn built all of that infrastructure that I just talked about, extended the sewer and water to his property before the first spade of earth was turned over for a new building. That's the way he develops things. He does it quality. He's got a track record. He's proven himself. Schnucks, look at every one of their locations. They've got a track record. They do it quality. They do it first class, and they are one of our best corporate citizens. One that we point to time and time again as we wished every business operated like Schnucks. This is a good plan. This is good for Vanderburgh County. We ask that you take the recommendation of the Plan Commission, which recommended approval seven to one, and let this project go forward for the betterment of Vanderburgh County. Thank you.

President Nix: Thank you, Mr. Shively. Mr. Bohleber, and I won't ask you to limit your time either.

Steve Bohleber: Well, I think that you have heard from some very important people in this process, the neighbors. I don't believe urban sprawl is a myth, anymore than I believe global warming and a variety of other things are myths. They are realities for the 21<sup>st</sup> century. The neighbors do not want this for compelling reasons. I think more than anything else this evening you need to listen to Mr. Blythe. He's not just a representative of his parents. He is an architect. He does this for a living. His analyses of drainage issues, his analyses of building concepts, his analyses of compaction are what he does for a living. He doesn't believe this is a quality development. He thinks it's in the wrong place. So do the neighbors, and I hope you do as well. Thank you.

President Nix: Okay. Comments from the Commissioners? I would just like to say something. I'll start out here. I guess, one thing that bothers me a little bit about some comments I heard about building issues and drainage issues, those issues will all be addressed. I think the people here can rest assured that the Building Commission and the contractors that Schnucks would hire, if this passes, is going to take place. I think we need to put that to bed. As far as drainage issues, if in fact this does pass today, Mr. Jeffers is more than capable of okaying a drainage plan that will be acceptable. We've got a good staff on board to do that, and he'll bring it back to us. So, I think that those are points that I don't think anybody in this room needs to worry about. I know Schnucks has built many, many locations, Mr. Hahn has done a considerable amount of construction work himself, and I can assure you that if there's something wrong with these buildings that when they're built, if there is in fact, they will be taken care of. So, I would like to lay that to rest. The thing that I see that, back in '97, the reason why I asked that question earlier, back in '97 that was rezoned, and, I guess, at the time that probably didn't look like a very good location to do the adjacent, the two banks and the Buehler's across the street. Granted that this project is probably a little bit bigger in size. Now you look at that corner and it looks like it fits pretty good. You know, I spend a lot of time out there driving back and forth to job sites in my other job, and I really don't see any problems with that corner. Granted you don't have quite the residences on the perimeter of that property, but at the same time, that probably in '97 didn't fit either, but it looks like it fits now. I think there's been some things that Mr. Hahn has done over and above what the development across the street did, putting buffers in place, and working with the residents on lighting issues, and it just seems like it's harder and



harder for these developers to get things done, because nobody wants any development in their area. They just don't want that to happen. But, the bottom line is, these things, in my opinion, need to take place. We established a TIF some time back and Mr. Shively referenced it just a few minutes ago, the TIF does, in fact, cover this area. It's Tax Increment Financing through, for this corridor up through it. Once again, the infrastructure is in place, we don't have sewer problems out there. I know that that was addressed earlier. Those sewers are in good shape all the way to I-64. There's plenty of water out there, there's plenty of utilities there, so, those issues that were addressed a little while ago, I don't necessarily think are true. So, I would like to just close with that. Once again, I don't see the problems that the Buehler's project across the street, traffic problems, I don't see those being a problem right now. I'll turn it over to the other two Commissioners.

Commissioner Korb: Go ahead. You're welcome.

Commissioner Tornatta: Alright. First off, as always, we would like to thank all of you for the participation you give, coming out here and remonstrating, whether for it or against it. We do enjoy hearing from you, and we have received all the e-mails and all the correspondence. Some of you, if you do have correspondence and leave a phone number, a lot of times you will get a call. Sometimes we just have a letter, we don't have your phone number, you might not get a call, but I do appreciate all those. This is my area. This is a place that I'm very familiar with, and I go out in that direction all the time. So, when some of you do say we ought to come out there, I'm out there more than you know. I think that I have seen a lot of development in that corridor, and with the Buehler's and just to the north of that with the new Bank of Evansville, it's really developing in a nice manner. It's very desirable to live in this part of the neighborhood, in this part of the county. I think we've seen county growth, in fact, Center Township and the like, we've seen a lot of development in those areas, Scott Township. So, we have even been addressing those issues on the Assessor's side, because of the amount of work that they've had to do to address the growth out in the area. Increased housing, increased people, we have seen an increased tax base, and if this were to go through, we've talked about an increased tax base from where it has been. Scott School is exploding at the seams, which means more kids, more opportunities, more development. Traffic, if this were approved, would actually not go across Highway 41, for the most part, to try and reach a shopping center. It would stay on this side of 41, and I would see a decrease in some of the traffic issues on 41, which is no matter what the development is, is going to be kind of a careful intersection to cross when you're crossing a divided highway. Most things I can say I would not be in favor of in this area, because, as I see it, you could have apartment complexes with the cars going all the time and a lot of nuisance there. You could have some other entities come in there whether it be a manufacturing firm or some type of other development that would not be very pleasing to this site. Because of the adjacent properties, this is a better fit than I've ever seen proposed at this site. So, that weighs on my mind. Furthermore, I would just like to say the intent of looking at a project like this is looking at good physical growth of our county, and also looking at good responsibilities that we have to bring in services to the people of our county. In this case, on this side of the road, we don't have those types of services, and I think that of the people that have contacted me, to the contrary of the people that have written me, are very much in favor of having a supermarket like this come in to our area, and they have seen the development of the Schnucks locations in the past and are very favorable of a development that's as classy as they've been. So, with that being said, I'll pass it to Mr. Korb.

President Nix: Mr. Korb?

Commissioner Korb: The biggest concern that I have is watching Mr. Hahn's development of the westside Wal-Mart. An area that was filled with trees and is now not. I know that I said early on that I would have an issue, not with Mr. Hahn, but with any developer who comes in, and because they have sunk an investment into an area thinking that they should be given a rezoning because of their generous contribution. I fully recognize what that is. It's development, it's betting on potentially getting it rezoned or not. I am with the other two Commissioners, this is a good fit for this area. My concern is that there are some loose ends, and Mr. Fontana we'll put the monkey on your back, if I may, that there was incredible outcry in this community years ago when they did the exact same thing with Target. Growing up on the east side that was very much an issue. There is no use and development, or whatever they call that here, I'm too new to know what the legal terminology is, but the huge berms and the fencing on top of that have really and truly saved those homeowners a lot of money. I say that because as Commissioner Tornatta said, you could turn around and have apartments there, and that would be your worst nightmare as neighbors, period. I think that the main reason, one of the main reasons why I will support this, and I know that's, everybody out there's got this sinking feeling like okay this is the third time we've heard it, Schnucks has been a great corporate citizen to our community, and I would ask that we go take you out to Target, if you haven't already been there and look at those berms. They are huge. Consider putting that in. We'll also put the onus on Mr. Jeffers, he and I had a conversation the other night while we were out, that Mr. Hahn's feet will be held to the fire, with regards to being sure that everything is accomplished and done before the actual move in date. I respect Bill's, I mean, I was going to invite Bill to come up and speak, but we would be here till 8:00. So, I chose not to do that. But, I know that Bill has the best interest of the people at heart as well. Sorry, but, he knows it's true. So, but, I know that Bill will absolutely, positively do that. I actually called Mr. Hahn earlier this week, I said, look, I've got a problem, a couple of problems with minor issues that need to be taken care of. Do you want development in your neighborhood? Absolutely not. I've walked that path. I've sat where you sat. I've felt extraordinarily frustrated with the people that voted yes. To the point where I withheld my vote against them on election day. That is your prerogative, and I respect that, but, unfortunately, or fortunately, as wherever you sit in your chairs, this is a development, this is an area that's going to be developed one way or the other. I appreciate your emotions and your feelings, and I feel bad, but I don't feel bad, because as a County Commissioner we've got an obligation to the overall group. So, that's all that I have, and would just ask Mr. Fontana if you would be hypersensitive to the neighbors. I know that you will, because you have in the past. You've done a great job with that. Your company is to be commended. Mr. Hahn, same thing to you, you've done a nice job in the past, except for what you did to me on the westside with Wal-Mart, and I'm pretty sure I'll carry that to my grave with me. Just plant a tree on where I would be buried, if you would please. Again, my heart aches for the folks that are there, but this is one of these, it's a situation that we're going to have to face this at some point in time or another, and I would rather do it with the help of a good corporate citizen, a worthy developer, and someone like Bill Jeffers who is purposely going to be sure that this thing is done, and done correctly. That's all I have.

President Nix: Commissioners, any other comments? I will entertain a motion.

Commissioner Korb: So moved.

Commissioner Tornatta: Second.

President Nix: All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. We need a roll call vote. Commissioner Tornatta?

Commissioner Tornatta: Yes.

President Nix: Commissioner Korb?

Commissioner Korb: Yes.

President Nix: And I vote yes. It passes. Is there any other business to come before the Commission at this time? If not, I will entertain a motion to adjourn.

Commissioner Tornatta: So moved.

Commissioner Korb: Second.

President Nix: All in favor?

All Commissioners: Aye.

President Nix: Opposed same sign. Thank you.

(The meeting was adjourned at 5:40 p.m.)

**Those in Attendance:**

Bill Nix

Kathryn Schymik

Craig Kendall

Gene Hahn

Steve Bohleber

Carol McClintock

Members of Media

Jeff Korb

Janet Greenwell

Ronald Dauby

Dave Fontana

Mrs. Earl Wilson

Nancy McCormick

Troy Tornatta

Mark Miller

Debbie Schwent

Les Shively

Tom Blythe

Others Unidentified

**VANDERBURGH COUNTY  
REZONING BOARD**

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**Bill Nix, President**

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**Jeff Korb, Vice President**

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**Troy Tornatta, Member**

(Recorded and transcribed by Madelyn Grayson.)