

**VANDEBURGH COUNTY
BOARD OF COMMISSIONERS
REZONING PETITIONS
JANUARY 20, 2009**

The Vanderburgh County Rezoning Board met in session this 20th day of January, 2009 at 5:25 p.m. in room 301 of the Civic Center Complex for the purpose of hearing county rezoning petitions.

Call to Order

President Tornatta: We'll be starting Area Plan immediately, please.

Commissioner Melcher: Area Plan? Do you mean rezoning?

President Tornatta: Rezoning.

Approval of the December 16, 2009 Rezoning Meeting Minutes

Janet Greenwell: Good evening.

President Tornatta: Hello.

Janet Greenwell: Janet Greenwell with the Area Plan Commission. I would ask that you approve our minutes, the minutes from the last meeting.

President Tornatta: Step right up. I need a motion to approve the minutes, please.

Commissioner Melcher: So moved.

Commissioner Winnecke: Second.

President Tornatta: Discussion? Roll call vote, please.

Madelyn Grayson: Commissioner Winnecke?

Commissioner Winnecke: Yes.

Madelyn Grayson: Commissioner Melcher?

Commissioner Melcher: Yes.

Madelyn Grayson: President Tornatta?

President Tornatta: Yes.

(Motion approved 3-0)

**VC-10-2008: Petitioner: Majestic Place LLC
Address: 333 & 815 S. Eickhoff Road and 201 & 351 S. Roesner Road
Request: AG to R-3, R-4 and C-4 with UDC
Action: Sent back to APC 3-0**

President Tornatta: Janet?

Janet Greenwell: Yes, we have two petitions on your agenda tonight. The first is 2008-36-PC VC-10-2008. The properties on Eickhoff Road and Roesner Road. Majestic Place is requesting to rezone the 220 acre site to a combination of commercial and high density residential. I have been following the newspaper and following all this stuff, and I'm hearing that it's being continued, but I would ask that you please take a vote, if you intend to continue it, to send it back to Plan Commission, so that the 90 day window doesn't close and the Plan Commission doesn't become a final action.

President Tornatta: Okay, and to that, I have received something from Shively and Associates, in association with Krista Lockyear, that says that there are possible amendments to the use and development commitments. That is following a line of discussion from the Westside Improvement and other people in the neighborhood. So, I'm going to submit that to the record, so that's available. I would entertain a motion from our Commissioners.

Commissioner Melcher: So moved.

Commissioner Winnecke: Second.

President Tornatta: The motion is to actually continue this and send it back to Area Plan?

Janet Greenwell: To send it back for amendment, please.

President Tornatta: For amendment.

Commissioner Melcher: Yes.

President Tornatta: We have a motion and a second. Any discussion?

Commissioner Melcher: Yes, I think we just need to say that we're not sending it back because of us. We were requested to send it back, because they want to do a special use. They've got one, but they are going to modify it, right?

Janet Greenwell: That is my understanding—

Commissioner Melcher: That's my understanding.

Janet Greenwell: —from what I've read in the newspaper.

Commissioner Melcher: So that's why we're voting to send it back—

Janet Greenwell: We're voting to send it back—

Commissioner Melcher: —not because we are.

Janet Greenwell: —because if you do not—

Commissioner Melcher: Exactly.

Janet Greenwell: —take a vote within that 90 day window, after Plan Commission approved it, then the Plan Commission action will become final.

President Tornatta: Right.

Janet Greenwell: And, I don't think that is the intent of anyone.

Commissioner Melcher: I understand that. That's why last week I said we would have to vote on it.

Janet Greenwell: Yes.

President Tornatta: Right, and there is actually a meeting tonight, and we're live, being January 20th, and the time of that meeting, if you're watching this meeting is 7:00 at the St., where?

Fred Padgett: St. Phillips Conservation Club.

President Tornatta: The St. Phillips Conservation Club. So, I expect it will be packed out there, to talk to the developers and their attorneys about any concessions that can be made, and any concerns that those people have, in that area. To reiterate, just for people to try and understand, if we don't send this back today, and we don't vote on this, the action of the 8-1 to approve will stand.

Janet Greenwell: It will be a final action, according to our zoning ordinance.

President Tornatta: Since we have both individuals, or both groups, the people that are against the development and the people who are trying to develop that want to send this back, obviously, this is a no brainer to do that.

Janet Greenwell: Yeah.

President Tornatta: So, with no further discussion, I will call for a roll call vote.

Madelyn Grayson: Commissioner Winnecke?

Commissioner Winnecke: Yes.

Madelyn Grayson: Commissioner Melcher?

Commissioner Melcher: Yes.

Madelyn Grayson: President Tornatta?

President Tornatta: Yes.

(Motion approved 3-0)

President Tornatta: Thank you.

Janet Greenwell: Thank you.

**Final Reading: VC-1-2009: Petitioner: Tim Moll of T&T Development Inc.
Address: 15901 Petersburg Road
Request: Change from AG to C-2 with UDC
Action: Approved 3-0**

Janet Greenwell: The other petition we have on your agenda tonight is 2009-1-PC VC-1-2009. Its' for T&T Development. They're requesting to rezone the property located at 15901 Petersburg Road from agricultural to C-2 with a use and development commitment. It's a ten and a half acre site located south of Baseline from Petersburg to State Road 57. It's the old Kings Men's Club. The Kings Men's was a private, exempt religious organization, and the new owners want to do a commercial enterprise as a party house/meeting house. Just pretty much a continuation of the use that's been there, but it will be a private entity and it will be a commercial enterprise, so it needs to be rezoned. The use commitment limits it to party house/meeting house, and the Plan Commission voted for, to recommend approval with 11 affirmative and one negative vote.

President Tornatta: Okay, the petitioner representative please.

Justin Shofstall: Justin Shofstall with Easley Engineering. I just reiterate what Ms. Greenwell stated was, that again, that the Kings Men's Club has been in operation since the early 1960's, for 40 plus years. The new owners purchased it, I believe they closed on October 6th of last year, and are wanting to keep the same enterprise, as far as using it for the party house/meeting house and other uses similar to what it has been in the past. I request that you vote for approval.

President Tornatta: Thank you, Justin. Any questions of Justin?

Commissioner Melcher: I just have one. Do they own boats?

Justin Shofstall: Do they own what?

Commissioner Melcher: Boats, because that place floods a lot.

Justin Shofstall: Whenever, it was one of the things as far as they did purchase the property prior to doing some good research to see what type of encumbrances there are. The property itself is in the flood plain. The existing finished floor elevation on the building itself is approximately five inches above the 100 year flood elevation established for that area. So, there are a few issues, and as far as getting in and out we're trying to address that with the site plan.

Commissioner Melcher: I just want it on the record tonight that there is flooding there. So, I didn't want them coming back on us or anybody.

Justin Shofstall: No, it's well documented--

Commissioner Melcher: Okay.

Justin Shofstall: --within the National Flood Insurance Program, and FEMA mapping that it is in the flood plain.

President Tornatta: Okay. Alright, the remonstrators?

Bill Jeffers: Good evening, Bill Jeffers, Vanderburgh County Surveyor. Quite a few questions were asked at Area Plan Commission when this came up. The gist of the questions was that there was activity going on out at the site without permits, and possibly without the knowledge of the developer of what permits are required. I won't go into any great detail, but I don't think anybody wants to stop the work. I don't think anybody wants to prevent them from converting it to a party house. I think it's an ideal place for a party house. I think the other commissioners on the Area Plan Commission thought somewhat along the same lines, but we wanted to reinforce to the developer that there are certain permits that must be obtained from local agencies that had not been obtained. There were certain permits that have to be obtained from State agencies of environmental protection and the State Department of Natural Resources when dealing in the floodway and plain. There would be a variance that needs to be obtained, because the finished floor elevation that exists out there is five inches, well, as Justin pointed out, is below flood protection grade. I think it may be their idea that they want any expansion of the building would be at the same elevation, and the flood plain management committee has never allowed a commercial establishment with a finished floor elevation lower than six inches above flood plain. So, there's a lot of issues that I just want to make sure that the developer is aware of. I just wanted to go on record. I do want to tell you that I know that Justin has informed the developer of each and every one of these issues. I just want to reinforce it, because, I think that some of the cautions did not get fully through to the developer, and I want to give him every opportunity to know that when it comes back to site review, especially in front of Drainage Board, and I think I can speak for some of the other review agencies, all developers are treated the same in Vanderburgh County. The same rules apply, and the same rules will apply to this development.

President Tornatta: Bill, the one remonstrator, or the one no vote, and maybe this is a question for Janet, but I feel you were there, what concerns did they have? Or did that individual have?

Bill Jeffers: I think Janet should answer that. I don't truly recall what the no vote involved.

Janet Greenwell: I believe our no vote came from Dewey Colter, a member who felt that the activities going on without permits didn't need to be rewarded. There's a saying in the Board of Zoning Appeals, asking forgiveness rather than permission, and I think that was the, yeah, he made it clear that he was not approving because they were doing stuff without permits.

President Tornatta: Okay, and, Janet, is there a way that we can address that particular issue?

Janet Greenwell: Yes and no. Yes, all permitting is required. They did a lot of, I haven't been out there since, Mr. Colter said that they had done some concrete work, they had changed the lay of the land, they had done some addition, started an addition, without any permits. There are built-in repercussions in the ordinance for doing that. They will, it's like what comes first, the cart or the horse? You know, they had to have the zoning in place to be eligible to go to site review to get the commercial permits. So, essentially, they were told to stop everything, don't do anymore work until you get all of your ducks in a row. There are repercussions. The Building Commissioner can issue tickets against any of the contract workers, and Plan Commission, ours is a little more complicated, but mostly enforcement through Plan Commission goes through court.

President Tornatta: Do we need to hold off on this measure until we have compliance? What's the recommendation of your office?

Janet Greenwell: I think that, again, the cart or the horse? They cannot proceed with commercial permits unless they are zoned commercial. If we look at strictly is this good land use, which I think is what our board was looking at, we want to deal with the, okay, approve the zoning and let the enforcement agencies take it from there. We, I'm sure Mr. Jeffers will see to it that we follow up with all required permits. They, our site review is not about to approve something that's going to be contrary to a State law, or wetlands regulations.

President Tornatta: I would entertain any dialogue from the Commissioners.

Commissioner Winnecke: Mr. President, I'm the Commissioners appointment to the Area Plan Commission. Mr. Jeffers and Ms. Greenwell characterized everything, I believe, accurately. I think it would be my recommendation, based on hearing presentation from Justin that day, and again today, that we move forward with the rezoning and let the enforcement agencies handle their tasks.

Commissioner Melcher: I would agree with that, because, just like she said, what comes first or comes second? We've been fighting this for years. I always like them to go to BZA first, but, you know, I understand that. I just feel like that flood thing, because I just didn't want, I know there's problems. I just want it on the record what's going on.

President Tornatta: One of the things we've talked about with Roger is the ability to be able to utilize the building once you get to that point.

Commissioner Melcher: Right.

President Tornatta: And, one of the things we are implementing is a procedure that if you don't have those fines paid, or if you don't have all the permits that need to be there, in line, that you can in turn not be given the right to run that building, although it's built. So, you might caution your client that that could be the case.

Justin Shofstall: Just for on the record on that, and, again, as far as with the lengthy discussion that I had with Mr. Jeffers during the public meeting, where we did place that on record. Again, we were hired after they first started doing work in which was required to have, with their acreage they're required to have an erosion control plan of any type of earth disturbing activity. We were hired after the fact, after the State came down. The State representatives did perform a, I would say chastising would be one way to put it, to the Vanderburgh County Engineering Department, and I believe, did they make any reference to the County Surveyor's Department, Mr. Jeffers?

Bill Jeffers: Nothing I can repeat.

Justin Shofstall: Okay. But, it one of those things, as far as why are they allowing this to go forward, and if somebody's moving forward without the proper permitting, Vanderburgh County itself does not have the manpower to watch every single thing—

President Tornatta: Right.

Justin Shofstall: –every single day. This happened to catch two days after they started doing the work. In reference to the work that Dewey Colter on the Area Plan Commission was recommending voting no, I was on the job site the following day, because I received a phone call from the property owners and developers two hours prior to the Area Plan Commission saying, “Will this be a problem?”. I’m not sure. We’ll find out. As of Friday morning, on January 9th, I did take several pictures of what was going on the site itself, the construction that was going on on the outside that Mr. Colter was referring to was actually for a free-standing, non-attached awning/canopy. As per what the, my client had informed me, was, well we talked to Roger Lehman, it’s free-standing, it’s not attached, it’s a canopy, doesn’t require the actual permit on that. Now, the concrete, that would have to go through site review, because it is tied with the drainage plan, and as per the exhibit that is on there, with one of the notes, proposed building addition and necessary hard surface parking. Will require a site grading and drainage plan, as should be heard before the Vanderburgh County Drainage Board in a public hearing. So, even with, they had these exhibits prior to the rezoning, in which they were going to take these exhibits, speak to Roger Lehman, the Vanderburgh County Building Commissioner, in terms of their possibility of getting the variance. I informed them, I said, with the possibility of them doing the actual building addition, it’s very, you know, slim to none on doing the building addition and going to the variance. From the last discussion I had with them, they’ve scratched that idea. Currently, what it’s slated is for this project, with the existing building and the proper hard surface parking and drainage facilities that serve this building alone, as is, is going to be heard at the site review this upcoming Monday, once it’s filed tomorrow morning, after this rezoning.

President Tornatta: Okay. So, it looks like we’re okay with moving forward, but we do need to convey that information.

Justin Shofstall: I reiterated again to my clients, Friday morning, on the 9th, after the APC meeting, as far as with general perturbation from other Area Plan Commission staff, and comments made by other recommending bodies at Area Plan Commission, that, again, do work that you only have permitting for. I believe with the current permit that is on file with the Vanderburgh County Building Commissioner, and which I confirmed again with Mr. Mills in the Area Plan Commission, was that their current building permit is for interior work of windows and doors only on the existing building.

President Tornatta: Okay. Alright, summation? I think we’ve already been there. Looking for a motion to approve.

Commissioner Winnecke: So moved.

Commissioner Melcher: Second.

President Tornatta: Discussion? Discussion from the audience? Roll call vote.

Madelyn Grayson: Commissioner Winnecke?

Commissioner Winnecke: Yes.

Madelyn Grayson: Commissioner Melcher?

Commissioner Melcher: Yes.

Madelyn Grayson: President Tornatta?

President Tornatta: Yes.

(Motion approved 3-0)

Justin Shofstall: Thank you.

President Tornatta: Alright. Janet, are we done?

Janet Greenwell: (Inaudible. Not at microphone.)

President Tornatta: Alright, can I have a motion to adjourn?

Commissioner Melcher: So moved.

Commissioner Winnecke: Second.

President Tornatta: So ordered.

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

Those in Attendance:

Troy Tornatta

David Miller

Justin Shofstall

Others Unidentified

Stephen Melcher

Madelyn Grayson

Bill Jeffers

Members of Media

Lloyd Winnecke

Janet Greenwell

Fred Padget

**VANDERBURGH COUNTY
REZONING BOARD**

Troy Tornatta, President

Stephen Melcher, Vice President

Lloyd Winnecke, Member

(Recorded and transcribed by Madelyn Grayson.)

**Excerpt of 2/17/2009 Commission Meeting
February 2009 Rezoning Petitions**

**Final Rezoning VC-2-2009: Petitioner: Porterfield Development LLC
Address: 8220 Telephone Road
Request: Change from Ag to R-4
Action: Approved 3-0**

President Tornatta: Public comment?

Commissioner Winnecke: There is a gentleman in the audience.

President Tornatta: Okay.

Les Shively: Mr. President?

President Tornatta: Yeah.

Les Shively: I hate to disrupt your agenda. I'm supposed to be live on the air in 15 minutes. If there's any way that you could go slightly out of order and take up the Porterfield matter, unless there's a problem.

Commissioner Melcher: Yeah, we can do that.

President Tornatta: Alright. If it's okay with the Board, we will move to item number 11, rezonings. Final reading of VC-2-2009, petitioner, Porterfield Development LLC, address 8220 Telephone Road, request change from Ag to R-4. Janet, did I ruin your game?

Janet Greenwell: That's okay.

Les Shively: She's quick on her hands there.

President Tornatta: Okay.

Les Shively: Mr. President—

President Tornatta: Yes.

Les Shively: —and members of the Commission, briefly, this is a request for an R-

3 rezoning. This property is adjacent to Centerra Subdivision, which my client also rezoned and platted as a residential subdivision. This will be a multi-family area that will serve as a buffer between this property, single family, and the E & B Paving property to the east in Warrick County. It received a unanimous vote with one abstention in the Plan Commission. We would ask for approval.

President Tornatta: Okay, Janet?

Janet Greenwell: Just one little correction. It was a request to R-4.

Les Shively: I'm sorry, R-4.

Janet Greenwell: As an extension.

President Tornatta: Ag to R-4?

Janet Greenwell: Ag to R-4.

President Tornatta: Okay, alright. Any remonstrators? Anything else to say, Les?

Les Shively: No, sir.

President Tornatta: Okay.

Commissioner Melcher: I move to approve it.

Commissioner Winnecke: Second.

President Tornatta: A motion and a second. Discussion? Roll call vote.

Madelyn Grayson: Commissioner Winnecke?

Commissioner Winnecke: Yes.

Madelyn Grayson: Commissioner Melcher?

Commissioner Melcher: Yes.

Madelyn Grayson: President Tornatta?

President Tornatta: Yes.

(Motion approved 3-0)

Les Shively: Thanks.

President Tornatta: I want to make sure you got your hour in. See ya.

Les Shively: Thank you.

**Final Rezoning: VC-3-2009: Petitioner: Ramsey Development Corp of IN
Address: 8530 Middle Mt. Vernon Road
Request: Change from R-1 to R-4 with UDC
Action: Approved 3-0**

President Tornatta: Alright, we're going to continue with the final reading of VC-3-2009, petitioner, Ramsey Development Corporation of Indiana, address, 8530 Middle Mt. Vernon Road, request change from R-1 to R-4 with use and development commitment. Janet?

Janet Greenwell: Good evening, Janet Greenwell with the Area Plan Commission. I apologize, my apologies for getting the packets to you so late. The little item that you took care of on the first of your agenda should fix that problem in the future.

President Tornatta: Okay, super.

Commissioner Melcher: That's the reason why we did that.

Janet Greenwell: Yes, and we thank you for it. Ramsey Development is requesting to rezone their acreage at the northern part of the site at 8530 Middle Mt. Vernon. The Plan Commission voted to recommend it with nine affirmative votes and one abstention. I will say that there was a lot of discussion about the traffic and the infrastructure improvements, and some commitments that West Side Improvement would like to see made with the neighbors in Cherry Hill Subdivision. One thing unique about this petition is that it will also require approval by the Board of Zoning Appeals. Under state statute the Board of Zoning Appeals has the ability to put conditions and restrictions on their approval of special uses and variances. There's already a special use and a variance filed, and it will go before our board after this, if this is approved as a rezoning. So, it was determined not to send them back for a use commitment, that we would defer to our Board of Zoning Appeals to ensure that, and I'm sure Mr. Padgett will be there, that the neighbors are well protected with any commitments on the development of the, the senior development there. I will say, for the record, that the other petition, the C-1 that Ramsey Development had requested, the VC-4-2009, was continued at the request of the petitioner and the recommendation of

the Plan Commission for a period of up to a year so that they can determine a little better, have a little better idea and tie down the use of it before they come and ask for a rezoning.

President Tornatta: Okay. Any remonstrators?

Fred Padget: Shouldn't the petitioner go first?

President Tornatta: I didn't see any. I'm sorry. Is the petitioner out there? Oh, I'm sorry. Okay, I didn't see anybody out there. Come on up if you need to. Thanks, Fred. Do you want to come up here and run this meeting? How are you?

Tim Huber: I'm good. My name is Tim Huber, and I'm with Ramsey Development Corp.--

President Tornatta: Okay.

Tim Huber: --Corporation, out of Tell City, Indiana.

President Tornatta: Alright.

Tim Huber: We've done 33 similar projects in Indiana, Ohio, and Kentucky since 1999. We will buy the property, build the building, and lease it to Trilogy Health Services out of Louisville, Kentucky. Twenty six of our 33 projects are with Trilogy. They've already approved the site, and we're anxious to get it rezoned and get started on construction.

President Tornatta: Anything else? Any questions of the Board? Thank you very much. Fred?

Fred Padget: Mr. President, Commissioners, I'm Fred Padget with the Westside Improvement Association. The reason I wanted to come down and talk with you a little bit tonight, and Janet mentioned the traffic concerns. We met and talked with each of you Commissioners about it in other sessions. As the University Parkway develops, and it will, traffic is going to become a considerable concern for us and for, I think, you also. Once it gets connected to Diamond, which could happen in the next couple years, or maybe three years, that's going to change traffic patterns and put even more traffic onto the Parkway. So, we're very concerned about getting a traffic study done sometime in the reasonable and near future. I know that you've, I think, talked with INDOT and others in trying to get some traffic information. We just want to reinforce the need for that, and if there's anything we can help to do to facilitate it, we would be glad to do that. We're very concerned about traffic out there. The County Engineer and the

Director of the MPO and the staff report for this petition also talked about a traffic study and the need for it. The intersection at the Lloyd and the Parkway, of course, originally the county had paid for that, we don't want to see that happen again. We think the state should pick that up, since it's a state route, and we don't think the TIF money should be used for the intersection there. That should be used for other infrastructure needs along the Parkway.

President Tornatta: You don't expect the state to pick up anything on the Parkway, right?

Fred Padget: On the intersection.

President Tornatta: Just the intersection, okay.

Fred Padget: The Parkway, of course, that's not a state road.

President Tornatta: Yet.

Fred Padget: Well, yet, but we feel that any TIF money that is accumulated ought to go towards infrastructure along the Parkway, as opposed to the intersection.

President Tornatta: Right.

Fred Padget: The, it was mentioned that we did want some stronger use and development commitments, particularly in regards to the lighting, noise, shielding the trash receptacles, delivery times and those kinds of things. The petitioners mentioned at the Area Plan Commission meeting that Trilogy pretty much has these outlined and required in the contracts that they have with Trilogy, and we have no reason to disagree with that. So, I think that that satisfies our concern. We would have liked to have had that put in a use and development commitment, but at this point I think we're satisfied with that. Ramsey has a good reputation, and Trilogy also, as far as I can determine. The privacy fence that we wanted to protect the neighbors along Cherry Hill Drive, the petitioner has said that they will ask for that at the BZA, or it will be built into their request from the Board of Zoning Appeals. Overall this is a really good project. We support it. It's a good land use for that particular property. It's a low traffic impact, as best we can determine. Again, we think the petitioner and Trilogy both have good reputations, and the West Side Improvement does support this project. Thank you. If there's any questions, I'll gladly try to answer them.

President Tornatta: Questions of the Board?

Commissioner Melcher: No. Thanks, Fred.

Fred Padget: Thank you.

President Tornatta: Thank you, Fred. Any other remonstrators to the project?

Commissioner Melcher: I'll move for do pass.

Commissioner Winnecke: Second.

President Tornatta: A motion and a second. Any discussion? Anything else from the petitioner? Roll call vote, please.

Madelyn Grayson: Commissioner Winnecke?

Commissioner Winnecke: Yes.

Madelyn Grayson: Commissioner Melcher?

Commissioner Melcher: Yes.

Madelyn Grayson: President Tornatta?

President Tornatta: Yes.

(Motion approved 3-0)