

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
January 27, 1997**

President Mourdock: We'll call to order the rezoning hearing for the Vanderburgh County Commission. While I don't have a separate agenda for that this evening, I think we have just one item.

**Approval of minutes**

President Mourdock: First thing on our agenda, however, is to accept the minutes of our Rezoning Meeting of December 16, 1996.

Commissioner Tuley: I will so move at this time.

President Mourdock: I will second and say so ordered.

**Final reading: Billy J. Munkus, 3535 North Green River Road**

President Mourdock: We will call to the Board's attention at this point to docket number 96-71-PC, VC-19-96, Petitioner: Billy J. Munkus. The premises affected are more commonly known as 3535 North Green River Road. In this petition the petitioner is requesting a change from agricultural zoning to a C-4 zoning. As a matter of record this petition was approved having nine affirmative votes and one abstention at the Area Plan Commission in December. Mr. Mitchell?

Mike Mitchell: Mr. President, members of the County Commission. My name is Mike Mitchell and I'm representing the owner of this property at this time, which has been sold subject to the rezoning. Basically, looking at the site plan, or the map that Morley and Associates prepared and attached to your staff field report from the Plan Commission, you'll notice this is a very narrow strip of just under four acres. To the north of this, it's almost directly across the street from the Day School, and to the north has already been zoned C-4 and next month you will have to the south approximately 60 acres coming before you for a C-4 zoning by Mr. Eastridge and his group, for a C-4, but I represent the owner to the south, Spurling Properties, who have those apartments back there and that will be with a Use and Development Commitment that we've worked out with Mr. Barber and Mr. Eastridge. So this is...and I think that's good zoning too. In this whole strip then you'll have to the south will be protected by Mr. Spurling's apartment complex. Then, I guess, to the north, I'm not sure what is north of the current zoned sixty or so acres of that particular property that goes on up north near Hirsch Road. My client is represented by Calvin Dentino, real estate broker, who is present here tonight. The prospective owner envisions offices with some commercial and the reason for the C-4 is that he thinks there is a need for some light warehousing to the rear of this property. He's not sure of the mix at this point. With that narrow of a lot you're not going to see anything too horrendous in there. As I said, you've got the C-4 to the north and you'll have a C-4 petition with the Use and Development Commitment mainly to protect as to screening and other matters on the rear portion of the referral company's property when you see that next month coming before you. I'm here to try and answer any questions. Mr. Dentino, of course, would have more definitive knowledge of the property and the persons involved.

President Mourdock: Any question of the Board?

Commissioner Tuley: This does come with nine affirmative votes and one abstention?

Mike Mitchell: That's correct, Mr. Tuley, yes.

Commissioner Tuley: Any remonstrators?

President Mourdock: Yeah, are there any remonstrators here tonight? I don't believe that there are.

Mike Mitchell: Billy, are you remonstrating? Okay.

President Mourdock: For the record, there are no remonstrators present.

Commissioner Tuley: Mr. President, I'll move at this time that VC-19-96, petition from Billy J. Munkus, be approved.

President Mourdock: I would note, for the record, this is a final reading for this zoning.

Commissioner Jerrel: I'll second.

President Mourdock: Since this is a rezoning, we need a roll call vote. Commissioner Tuley?

Commissioner Tuley: I vote yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I will vote yes.

Mike Mitchell: Thank you very much, I appreciate it.

President Mourdock: Are there any other items to come before the Rezoning Commission or for the rezoning hearing? Hearing none, we will adjourn the rezoning hearing.

Commissioner Tuley: Do you need a motion for that?

President Mourdock: Yes, I do.

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

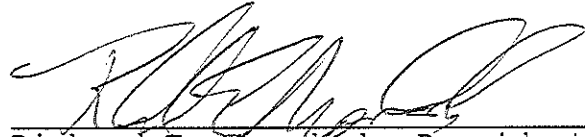
The meeting was adjourned at 7:12 p.m.

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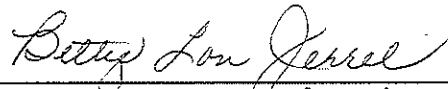
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Those in attendance:  
Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Suzanne M. Crouch  
Charlene M. Timmons  
Mike Mitchell  
Bill Dentino  
Others unidentified  
Members of the media

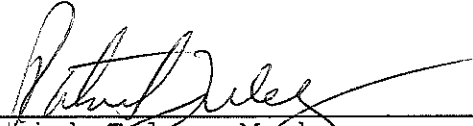
VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS



Richard E. Mourdock, President



Bettye Lou Jerrel, Vice President



Patrick Tuley, Member

Recorded by Charlene Timmons  
Transcribed by Todd Hochstetler



**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
February 18, 1997**

The meeting was called to order at 7:07 p.m. by President Mourdock.

President Mourdock: Good evening. I appreciate you all coming tonight. You are at the Rezoning Meeting of the Vanderburgh County Commissioners.

<b>Introductions</b>
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President Mourdock: By way of introduction, I will introduce the table here. At my far right is Barbara Cunningham, who is our Executive Director of Area Planning; to her left is Tim Born, who is tonight serving as counsel for the Commissioners; to my immediate right is County Commissioner Pat Tuley; to my immediate left is County Commissioner Bettye Lou Jerrel; to her left is Tony Greubel, our Administrative Assistant, here in the Commissioners' Office; and to Tony's left is Charlene Timmons, who is our Recording Secretary. As we begin tonight, obviously, we have a very full room and I will guarantee you within a few minutes we will have a very warm room, regardless of the temperament of people in here this room tends to get warm. It is going to be very difficult for the speakers to be heard. Our purpose in being here tonight is to deal with four rezonings. Two of them on first reading and two of them on final. It is very important that everyone in this room understand what the rules of this meeting will be. Quite simply, the developers will be asked to make a presentation that will take no more than 20 minutes. Remonstrators will then have a total of 40 minutes to speak. Then the Commission will address questions to either or both of those groups. The developer will again have the opportunity to address the Commission and after those questions are addressed, then this Commission will vote. It is very important for everyone in this room also to understand the basis upon which this Commission is acting as a Zoning Board. We are looking at four questions and four questions only. This is defined for us by statute effectively. The first question is, are the issues presented to us proper land use? That is number one. Number two, does the plan as presented aid in the overall development required within a given area? Question number three is, does it conform with the stated plan of the Area Planning Commission? The last question, does this element of the stated plan serve the long-term best interest of this community? That's what we're dealing with. One other issue, because there are many here tonight, we are going to ask you to be very brief in your comments. Just because we are elected officials doesn't mean that we have to hear one particular point of view five or ten times. We may have chosen to run for office, but we are also capable of making good decisions. As we listen to all the points that are being made, again, if someone stands up and makes the point that you wanted to raise before you come to the microphone please don't say the same thing over and over. You are just wasting our time and wasting the time of all those involved. With that I would ask first of all...or just make one other statement that those people speaking on given petitions will be sworn by the County Attorney this evening, Mr. Born, so

when we get to a specific item, then we would ask you to stand and be sworn before you address the committee. All of our minutes are verbatim, so when you go to the microphone, please state your name and your address for the record.

**Approval of minutes**

President Mourdock: With that, I will first of all ask for an approval of the minutes from our last meeting which was January 27, 1997.

Commissioner Jerrel: I move approval.

Commissioner Tuley: I'll second.

President Mourdock: I will so order.

**First reading: VC1-97 Petitioner Richard Broerman 6408 Kembell Dr.**

President Mourdock: With that we will go to first readings and I will ask Ms. Cunningham to summarize VC1-97.

Barbara Cunningham: VC1-97?

President Mourdock: Yes, I'm sorry. Richard Broerman, the first reading. Do you have that one?

Barbara Cunningham: All you do is pass that on to the Area Plan Commission.

President Mourdock: Okay, go ahead, Pat.

Commissioner Tuley: Mr. President, at this time I will move for approval of VC1-97 on first reading to be sent on to Area Plan for a recommendation to this Board at a later date.

Commissioner Jerrel: Second.

President Mourdock: So ordered. Do we need that by roll call?

Commissioner Tuley: No.

President Mourdock: I didn't think so.

**First reading: VC2-97 Petitioner Mildred Heerdink 410 N. Burkhardt Rd.**

President Mourdock: The second item that we have for first reading tonight then the petitioner is Mildred Heerdink with the address of 410 North Burkhardt. A requested change in zoning from agriculture to C-2.

Commissioner Tuley: Mr. President, I move at this time that VC2-97 be approved on first reading and forwarded to Area Plan Commission to come back before this Board at a later date.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**Final reading: VC21-96 The Referral Company 3401 N. Green River Rd.**

President Mourdock: Now then, for final readings we have two. The first being VC21-96. The petitioner is the Referral Company. The address is 3401 North Green River Road. The request is from agriculture to C-4.

Tim Born: All those who will speak on this petition raise your right hand to be sworn. Do you and each of you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God? If so, say I do.

Speakers: I do.

Tim Born: Thank you.

President Mourdock: Yes, please, Ms. Cunningham if you would give a report.

Barbara Cunningham: I have been asked to give a short introduction. I hope it's short, it got lengthier. Marco DeLucio is the representative for The Referral Company in this petition to rezone 3401 North Green River Road from agricultural to C-4 with a Use and Development Commitment. Hirsch Land Trust is the owner. The petition was continued from January's Area Plan Commission meeting to the February Area Plan Commission meeting at the petitioner's request to allow submission of a Use and Development Commitment. This 57.88 acre site is located on the east side of Green River Road north of Spring Valley Road in close proximity to the Timbers Apartments and Evansville Day School. It is adjacent south of the Munkus rezoning site which was approved by the County Commissioners at their January meeting. The Comprehensive Plan designates this limited strip of land along the east side of Green River for commercial development on the year 2015 Future Land Use Map. The area to the east of this commercial strip is designated for residential use. Although it is zoned C-2 and C-4, much of the land to the south of this site is an existing multifamily development, Lakeside Manor, with the remaining land along Green River Road developed as a commercial use. This 58 acre site is located in a growing area of mixed multifamily residential and commercial uses. A development of this site and density could create a significant increase in traffic. Because of the location across the street from a school, careful planning must occur to minimize traffic conflicts particularly during peak hours, schools opening and closing. Plans for the development of this site could be coordinated with proposed development of the sites adjacent north and south to utilize shared curb cuts and access to eliminate the proliferation of commercial curb cuts along this major arterial. All of the other infrastructure is in place. Green River Road has been widened. Sewer and water are readily available to the site. As I stated in your Staff Field Report and stated at the Area Plan Commission meeting, some of the Use and Development Commitments submitted by the petitioner are not easily enforceable by Area Plan Commission and should have been included in private covenants. I'll go through the Use and Development Commitments. You have those in your

packets, I believe. The petition agrees to grant right-of-way for the extension of Spring Valley and Cullen in substantially the location shown on the site plan. In his presentation to the Area Plan Commission, Mr. DeLucio, Mr. Ziemer, for the petitioner put on the record that the petitioner will construct the right-of-way for Spring Valley Road and do the same for Cullen at such time as Cullen has been extended south from Lynch Road to the north line of their property and at such time as they develop the east end of the property where Cullen will be located. Number two in the Use and Development Commitment addresses uses and those commitments are easily enforceable by Area Plan Commission through the permit process. The same is true for number three. Special uses are enforceable through the Board of Zoning Appeals and through the permit process. Number four is a private agreement addressing fences and trees and number four specifically states that it is not enforceable by Area Plan Commission, but only enforceable by the owners of Lakeside Manor. Area Plan Commission can only enforce fencing which would be a code requirement stipulated in the zoning ordinance. The fifth commitment speaks of landscaping and maintenance of such. Area Plan Commission does not have a landscaping ordinance, nor a landscaping engineer on staff to enforce this. Number six addresses construction and maintenance of fencing, trees, landscaping and must be privately enforced. Exterior lighting can be addressed at the Site Review process as can outside speakers denoted in number eight. Number nine is a private agreement as Area Plan Commission will not determine whether propane or electrically powered forklifts will be used on this site. The sign restrictions that you put in the Use and Development Commitment are very good and we can enforce this commitment through the permit process. Area Plan Commission cannot enforce what is in the language of the lease, which is the response in number eleven, as that is a private contract and a private agreement and we don't have access to lease language. Dirt and dust abatement is required during the construction process. This is something that is enforced by the Building Commissioner. With the Site Review process we can enforce the location and placement of the dumpsters. Only the Drainage Board can determine where the drainage flows. I would like the Commissioners, if they would, to make it part of the record that Area Plan Commission is not liable to enforce these private covenants and I hope that this way of doing things does not become normal procedure for Use and Development Commitments in the future. The petition was approved twelve to zero at Area Plan Commission on February 5th. The Area Plan Commission Board reaffirmed that those items stated by me as private covenants were not enforceable by staff. It would also help greatly is when Use and Development Commitments come in if you give them to the staff before they are filed, so we have an opportunity to let you know which ones we can enforce and which we cannot. When originally submitted the Use and Development Commitment was signed by the Petitioner instead of the owner of the site. Today we received a new Use and Development Commitment which was signed by the owner of the site as required. So, it is now signed and it is...a valid document is now signed by the owner of record of the site.

Marco DeLucio: I have my "Vote Yes" sticker on. I think most of these people are here with me this evening! I'm not going to



repeat anything that Barbara just went over. I think she summarized the positions that are being taken quite well. I would point out when we went through this process, when we filed the Use and Development Commitment, Mr. Spurling, which is the owner of the property immediately south of this parcel, was the individual who requested Use and Development Commitments in order to avoid bringing a number of people up here to live in his retirement community to remonstrate against this petition. We suggested at that time private covenants to do many of these things, but Mr. Spurling really wanted to have a Use and Development Commitment put into place. Weighing the options, we chose the Use and Development Commitment. Mr. Spurling's attorney was at the Area Plan Commission meeting a couple of weeks ago and indicated that everyone understands that the Plan Commission does not have the wherewithal to enforce some of these restrictions that Ms. Cunningham just went over and they understand that they are going to be responsible for these covenants. Many of these covenants are solely directed towards Mr. Spurling's property. We do have the provision in the Use and Development Commitment that says it can be enforced by property owners within a one mile radius of this property, so they have the right and the power to do that if we violate these covenants. In the future, I think, when we did file the Use and Development Commitment it got filed at the last moment as we were negotiating with Mr. Spurling. We will always try to get these Use and Development Commitments into the Plan Commission staff so that they can have an opportunity to review them before the time deadline runs out. We just flat ran out of time this time, so that is our excuse if an excuse is warranted under the circumstances. With that, Mr. Eastridge is here with me this evening. He is a representative of The Referral Company, Kevin Eastridge. We're happy to address any questions you may have concerning this project.

Barbara Cunningham: Mr. Mourdock, does the Commission have the copy that is signed by the Hirschs or do I have the only copy?

Marco DeLucio: You have the original copy.

Barbara Cunningham: alright, let's get that out of the file.

Marco DeLucio: I do have an extra copy if that's--

Barbara Cunningham: No, I want that one.

President Mourdock: Questions from our Attorney here? Ms. Cunningham made the point that Use and Development Commitments must be enforceable. Some of those I heard Mr. DeLucio say that they're basically in favor of Mr. Spurling although he didn't want them simply in covenants he wanted them to be enforceable. I also heard Ms. Cunningham say that some of them still are, in fact, not enforceable through APC.

Tim Born: I don't mean to speak for Ms. Cunningham, but what I understood her to be saying was that there are some of them that are quite difficult, given staffing restrictions, for the APC to police and that they are unable to do it for that reason. It would create a larger tax burden on the members of this community. What is true though, is that they are enforceable by

the owners of the property adjacent to this and they can bring an action, either legal or equitable, to enforce them. They don't have to rely upon the Area Plan Commission to bring that action.

President Mourdock: In fact, to go one step beyond that they are actually enforceable by any landowner within a mile.

Tim Born: Within a mile in this case.

Marco DeLucio: I would point out that Mr. Spurling's counsel was at the last meeting and indicated that he understood the limitations that the Plan Commission might have in enforcing these and indicated that it would be his intention if these were ever violated to seek private enforcement of this public restriction.

President Mourdock: Are there questions for Mr. Eastridge or for Mr. DeLucio? Is there anyone else in the audience who has been duly sworn to discuss this issue?

Commissioner Jerrel: What was the recommendation? What was the recommendation, again?

President Mourdock: The vote of APC?

Commissioner Jerrel: Uh-huh.

Barbara Cunningham: Oh, it was twelve to zero. Twelve votes in the affirmative. Also reaffirming of those private covenants that I find it difficult to enforce.

Commissioner Tuley: Mr. President, I'll move then at this time with regard to VC21-96, petitioner The Referral Company, be approved.

Commissioner Jerrel: Second.

President Mourdock: We will have a roll call vote then. I just want to emphasize the importance though, again, with what Ms. Cunningham was saying that the part of that motion include that we act to support those that are otherwise unenforceable. That we go on record with that.

Commissioner Tuley: Let me make sure I understand what you are saying. So that APC not be responsible for enforcing those that are not enforceable by her department and that it be settled among the private landowners?

President Mourdock: That's right and for the record that is the understanding that this Board is acting upon.

Tim Born: That is set forth in the agreement--

President Mourdock: Right.

Tim Born: --I believe on page five.

President Mourdock: Okay, I have a motion and a second for the

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rezoning of VC21-96 and by roll call vote then, Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I will vote yes, so the zoning is approved.

Marco DeLucio: Thank you very much.

**Final reading: VC12-96 Petitioner: Robert Woodward, Sr. 4201 N. Burkhardt Rd.  
3801 N. Burkhardt Rd.**

Barbara Cunningham: Are we ready? Mr. Woodward, are you representing your petition?

Carolyn McClintock: I am.

Barbara Cunningham: Ms. McClintock is the representative for this petition to rezone approximately 111 acres at 3801 and 4510 North Burkhardt Road from agricultural to M-1. This site is located between Burkhardt Road and I-164 just north of Old Boonville Highway. The petition to rezone this 111 acre site has been continued for a number of months. First for satisfaction of notice and more recently for an amendment to include a Use and Development Commitment. Mr. Woodward has signed a Use and Development Commitment as the owner of the property, but stated... during the course of the meeting he stated that he was not the owner. Has this changed, Mr. Woodward? Are you the owner of record now?

Carolyn McClintock: No.

Barbara Cunningham: Well, the owner of record of the property must sign the Use and Development Commitment before the Commissioners can accept it, so we have to have the owners...I am just letting you know that it is not valid unless the--

Carolyn McClintock: It has been signed.

Barbara Cunningham: Has it? Okay, well I have not seen it. The site is located north of Old Boonville Highway in an area predominantly agricultural use with some residential development. This area is projected by the Comprehensive Plan as an area of commercial development with industrial use projected to the south of the interchange area. The Comprehensive Plan identifies this area around the I-164 and Lynch Road extension as an example of where commercial development might occur in the future with the infrastructure in place. The plan also calls for utility and transportation system improvements necessary to accommodate new development to be in place to mitigate development impacts. One of the goals of the Comprehensive Plan is to encourage development located in or adjacent to those areas served by water and sanitary sewer systems. At this time, we know that the Sewer Department has no

plans to extend the utility in this area. This site is located between Burkhardt Road and I-164 at the location and is bisected by the proposed Lynch Road Extension/I-164 Interchange. A large portion of the site is included in the planned interchange project. Currently there is no access to I-164 from this site. According to the County Engineer, the right-of-way needed for Phase 2 of the Lynch Road project includes a large portion of the land proposed for the M-1 zoning north of Lynch Road along I-164. The zoning classification requested for this site is M-1. The M-1 district allows many uses considered incompatible and inappropriate adjacent to residential development. Although the Use and Development Commitment notes all lots fronting Burkhardt Road of two acres or less shall be limited to C-4, as I stated before at the Area Plan Commission meeting there are no lots until a subdivision is recorded with the proper letter of credit submitted. M-1 allows on premise signs 300 square feet and larger billboards up to 1,000 square foot with no height limit. The approximate 3,960 linear feet along I-164 would allow, for instance, up to eight billboards if placed at 500 foot intervals. The use commitment filed by Mr. Woodward does address billboards. It states that billboards will be allowed only along I-164, Lynch Road and a section of Burkhardt. If I may, I will go through the Use and Development Commitment. Use and Development Commitment, Section A deals with drainage. Dealing with drainage is an existing requirement of both the Drainage Board and Site Review Committee and it is always addressed at both of those meetings. B states that water and sewer will be extended, but it does not give a commitment as to time only following primary approval and primary approval is something that might not happen. There is nothing that would require a subdivision to be platted. It also says prior to any use of the property...does that mean, and maybe Ms. McClintock can answer this, when it says prior to any use of the property does that mean before a use is established or before a billboard goes up or it means anything that happens on the property? Is that correct?

Carolyn McClintock: That's correct.

Barbara Cunningham: Okay, I know of no design plans...Number C talks about the widening of Burkhardt and speaks to a reasonably necessary amount of access that is needed. I checked again with Mr. Stoll today, and Mr. Stoll is the County Engineer, and he knows of no design plans at this time for the widening of Burkhardt Road and he also doesn't know what reasonably necessary means. However, he told me that probably, and this is new information, that probably, I think he said, 45 feet would be necessary from the center line of Burkhardt Road for the widening. I will not hold him to that, but that's what he thought could be reasonably necessary. As far as the time frame where the Use and Development speaks to the time frame where they would not build, would not construct in the proposed Lynch Road/I-164 Interchange, Lynch to Burkhardt is planned to be let in March. I believe it's the 11th of March they're to let the contract, and Burkhardt to...so it's planned to be let in March, so I would think that five years would seem to be a reasonable time to allow...to hold the property for the purchaser giving of Lynch Road interchange property. We address these facts under D. I mean, it speaks throughout...it

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addresses lots, there are no lots. There is no lot until a subdivision is recorded, until the letter of credit is put up for the improvements to be put in. I might also say that loading docks might also be a requirement of Site Review. It says that they can have no loading docks, and I'm not sure what Site Review...you know, it depends on what businesses are going in there, whether they would need loading docks. We certainly don't want them to conflict with zoning requirements. E, we can do. It addresses land use and this can be enforced through the permit process. F, again, there are no lots. The infrastructure is not in place at this time for this development and it is not finalized with the Use and Development Commitment that has been filed. This petition was denied by the Area Plan Commission at their meeting February 5, 1997. There were ten no's, one yes, and one abstention.

Tim Born: All others that will speak on the petition raise your right hands to be sworn. Do you and each of you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God? If so, say I do.

Speakers: I do.

Tim Born: Thank you.

President Mourdock: Seeing the number of hands that were in the air just a moment ago, I would ask when we come to the remonstrators that you limit your comments to less than three minutes, please. Otherwise, we will be here well into the evening. Mrs. McClintock? Please, for the record state your name and address.

Carolyn McClintock: Good evening, my name is Carolyn McClintock, I reside at 800 S. Colony Road in Evansville, Indiana. I'm joined this evening by our project engineer for this project, Jim Morley, with Morley and Associates. Jim will be presenting some of the information for our developer this evening. Jim and I represent the owners and developers of the Burkhardt/Lynch Business Park at 3801 and 4201 Burkhardt Road. We appreciate the opportunity to present to you this evening, the case for rezoning this property for commercial use. I'd like to begin with this letter of support:

"February 18th, 1997

Dear Bob,

I'm happy to extend to you the Metropolitan Evansville Chamber of Commerce endorsement for the development of the Burkhardt/Lynch Business Park. The Chamber seldom supports individual development projects unless they provide significant capital investment and job creation opportunities for our region. We feel that your project meets these criteria and provides an additional development tool to help with the expansion of existing business and to attract new companies that wish to locate their businesses in our area.

Sincerely,

Robert L. Quick  
President/CEO Evansville Chamber of Commerce"

We are here this evening to request a rezoning from agricultural to M-1 with the Use and Development Commitment as outlined by Mrs. Cunningham. This rezoning was originally presented to the Area Plan Commission at the November meeting and forwarded with a four in favor and three opposed recommendation. The Vanderburgh County Commission did not vote on the rezoning at their November meeting when a notice question was raised by the remonstrators' attorney. With input from the professional staff members of various agencies in the City and County and comments garnered from public meetings from the neighbors, we filed this rezoning with the Use and Development Commitment. The hearing on this rezoning resulted in a ten opposed, one in favor, and one abstention. We requested meetings with the neighbors who rejected our invitations to meet on three separate occasions. Frankly, we were surprised with the second vote of the Area Plan Commission, given that the new petition included the Use and Development Commitment within it so many of the concerns of the neighbors and the Commission members. We have a legal opinion from Mike Mitchell addressing staff concerns regarding this Use and Development Commitment and that is in the packet that I provided to each of the Commissioners and to Mrs. Cunningham. We have learned since this meeting that Commission members were instructed that there were no real plans for this development and that the rezoning was merely a way to place billboards on this property. I stand before you to assure you that nothing could be further than the truth. When we are finished with this presentation this evening, I believe that you will know that the intentions of the owners of this property are to develop it as a commercial park and to use billboards along I-164 is but a small portion of this plan. As Richard spoke earlier, and as you are well aware, County Commissioners are required to vote on the use of land as applied to rezonings brought before this body. Pure and simple the question before you this evening, should this property that is bounded by a four lane highway at an interchange and bisected by a four lane limited access road be commercial? That is the question to be answered this evening. As you can see from our exhibit this is an exact duplicate copy from the Area Plan Commission's Comprehensive Plan 1996. All of the subject property falls within the commercial and industrial zone as planned by the Area Plan Commission. In fact, the majority of the property to be developed is within the industrial zone. This area is bounded by the Lloyd Expressway, Green River Road and I-164. All of this area is primarily commercial in nature as you can see. We have written opinions from Bill Bartlett and Don Wright to present to you and those were, again, included in your packet, that indicate the only use for this property is industrial and commercial. I will just simply read these into the record. From Bill Bartlett and he says and I quote:

"As a matter of fact, the only viable use of the property after construction of Lynch Road based on reasonable investment backed expectations is for commercial or industrial use. I would encourage you

to develop this property for this type use."

Don Wright, with Wright and Reit states in his letter:

"Based upon all data presented herein it is concluded that the highest and best use of this site would be for joint industrial and/or commercial use."

This rezoning is 100% consistent with the Comprehensive Plan and 100% consistent with the requirements for industrial and commercial development as outlined in Mr. Bartlett and Mr. Wright's letters. The Area Plan Commission Staff Field Report raises many questions regarding the infrastructure improvements planned by these landowners and developers. We are happy to provide the Commission with the answers to these questions even though the responses go beyond the question of land use. The developer plans to run at his expense all utilities to the site including water, sewer, storm sewer, gas and electric. The adjoining neighborhoods do not currently have water and sewer utilities on their property because the county has been unable to provide water and sewer. Septic and water contamination is a problem now, and will become a larger problem in the future. The current requirements for a septic system is 2 ½ acre lots; most of these homes sit on half acre lots. The running of the utilities not only relieves the county of a large future expense, but also can solve a current neighborhood problem. We will commit to put in a large enough pumping station, at the expense of the developer, to meet the needs of the neighborhood. According to Jim Cameron, with the Evansville Water and Sewer Utility, there are no plans to extend sewer and water to any part of Vanderburgh County. I read from a letter dated February 18, 1997:

"It is the current policy and practice of the Evansville Water and Sewer Utility not to extend water lines or sanitary sewers without applicants paying for the service."

Developers have and will continue to be responsible for the installation of utilities to their projects. Not since Russell Lloyd installed the sewers along Highway 41 in 1973 and '74 have sewer and water lines been installed at taxpayer's expense. We know that this entire project area sits in the floodplain. Since floodplain remediation is such an important part of this project, I'm going to ask Jim Morley to show you the drainage plan and discuss the process for floodplain remediation with you.

Jim Morley: Thank you, Carol. My name is Jim Morley. I reside at 8311 Remington Drive in Evansville. The display that I have put up is an overall map of Evansville and the surrounding areas. What you see in the darker shade of blue on this map represents the hundred year floodplain. What I have colored in red is the 110 acre site that is involved in here. The property on the east side of Burkhardt Road drains to the north then under I-164 and continues north into the Boesche Ditch, then the Boesche Ditch flows back to the west in to the Crawford-Brandeis and into Pigeon Creek. At this...none of the water from the site travels across Burkhardt Road down the roadways or ditches

along the area on the east side...or on the west side of Burkhardt Road. At this point the floodplain and the flood elevations are dominated by Pigeon Creek. Pigeon Creek drains 201,000 acres at this point. The development of this site will have no effect whatsoever on expected flooding from backwater floods of Pigeon Creek. In fact, Toyota's 1,100 acres at Gibson County may have an effect much more significantly than development of this property because that's in the headwaters. Pigeon Creek begins at Town Square in Princeton, Indiana. The flood plain elevation is 384, The property that is involved here is shown as being just a portion of it on the south side being out of the floodplain and then a portion of the rest of it in the floodplain and, yes, they have to be elevated. The important thing is that they will be elevated so that the first floor elevation of any structures are at least two feet above the hundred year floodplain. So, therefore, there is no danger to any development in this area. None of the development in this area is in a floodway of a creek that would in any way restrict any flow anywhere. So, therefore, there are no detrimental effects to anyone in Vanderburgh County from total development of this site.

Carolyn McClintock: Thanks, Jim. I just want to reiterate that a great deal of Vanderburgh County is in the floodplain and all construction within the floodplain is done at two feet above the 100 year flood elevation with all inspections and regulations of the federal government administered by FEMA, the Federal Emergency Management Agency. According to Roger Lehman, Vanderburgh County Building Commissioner, these projects are carefully supervised with stringent requirements to ensure proper drainage and compliance with codes. I want to remind the Commissioners that the final drainage plan will have to be approved by the Drainage Board. There's been much discussion in the Staff Field Report also about the transportation system and that infrastructure. I would like to begin this portion by reading from a letter from Keith Lochmueller, at Bernardin Lochmueller & Associates.

"Dear County Board of Commissioners,

Regretfully, I am unable to attend this evening to personally deliver comments. We believe that the traffic generated by this development will be successfully integrated into the existing and proposed transportation network. From our perspective there are projects under way or planned to enhance the existing transportation network in the site vicinity. First, the planned Lynch Road extension from Oak Hill Road to State Route 62 provides direct access to the business park. Although the time line for constructing this improvement is not entirely defined, we believe the extension and interchange with Interstate I-164 can be expected prior to full build out of the project. B.L.A. believes Lynch Road will carry the majority of site traffic and minimize impacts to Morgan Avenue and the Lloyd Expressway."

As stated earlier we talked about this rezoning being located adjacent to I-164 on the east and road improvements are yet to



be completed for the balance of the project, but this developer and these owners are anxious to participate in the successful completion of these projects. For the Lynch Road project the developer will donate the land for the extension of Lynch Road to I-164 and the interchange at this intersection. This land donation is estimated at over 19 acres at a value of \$1,140,000. Lynch Road is projected to open in late 1997. Traffic is estimated between 15,000 and 30,000 cars per day without this development. Burkhardt will have to be four lane within a reasonable time frame whether this property is developed or not. For Burkhardt Road the developer will donate the land along Burkhardt Road for the widening of this road to four lanes representing six-tenths of an acre or whatever land is necessary with a total value of a minimum of \$45,000 for the Burkhardt Road development. The total donation of land for road improvements for Vanderburgh County taxpayers is in excess of \$1,200,000. Access onto the development is designed so that there are no direct curb cuts onto Burkhardt Road which limits access and reduces the chances of accidents and congestion. The transportation plan has been approved by the Evansville Urban Transportation Study and I read from a memo from the Evansville Urban Transportation Study from Rose Zigenfus:

"The proposed site plan as submitted and reviewed meets the Evansville Urban Transportation Study standards and requirements. Therefore, EUTS supports the development located at 3801 North Burkhardt Road."

There's also been much discussion about timing of this project and we laid out a time line for you so that you could look at when this development would be done and when these various projects would be done that we've been discussing. The pink line that you see is, not our, but the government's estimates of when these projects will be done. Paving of Lynch to Burkhardt Road--

President Mourdock: Excuse me Carol, if I may? Jim, could you put it over there so more of the audience could see it? I want them to see it as well.

Carolyn McClintock: --so the pink line shows you the paving of Lynch Road to Burkhardt Road; the completion to be December '97/ January '98. Then you see acquiring the right-of-way for Lynch and the I-164 interchange. The construction of the interchange, widening of Burkhardt Road, you see as we go down. This is the beginning of building construction on this project and building and flood level inspection on this project. This road, Lynch Road, will be completed before we start building this project and we'll go into a little more detail about what these developers need to do after this procedure. There are a number of additional approvals that must be met before this project can go forward even if it is rezoned this evening. The project will go back to Area Plan Commission for subdivision review. This vote is taken in a public meeting with final authority resting with the Area Plan Commission. This provides an opportunity for the public to review plans for lots, roads, green space and other project details. Each and every building will have to be approved by the Site Review Committee and the Site Review

Committee members include staff members in the city and county including the County Engineer, the Evansville Urban Transportation Study, the Water and Sewer Department, the Building Commissioner and the County Surveyor. In addition to the Building Commissioner, Roger Lehman has to approve the plans for floodplain construction and inspect the construction. All of these approvals take time, lot's of it. Plenty of time to complete the construction of Lynch Road and begin other road projects in this area. Vanderburgh County has a unique opportunity to work with property owners and developers to truly plan for the future of this area. Only with this arrangement can the county realize such a significant donation of property for road construction, limit access to a new large development avoiding the creation of another First Avenue, get sewer and water service installed to an entire neighborhood at no expense to the county and realize a significant increase in property taxes to help with the construction of additional roads and county improvements. If this property is developed piecemeal by the six property owners, it will be next to impossible to agree to the elements discussed in this proposal. For example, each owner would have the right to access Burkhardt Road which would be a minimum of six curb cuts, let alone agree on donating \$1.2 million worth of land. This is the kind of piecemeal development we are trying to avoid in Vanderburgh County. In addition to these commitments it is important to know that the developer of this project has developed such properties as the Lloyd Office Park, Burkhardt Crossing, Old Boonville Highway Commercial/Industrial Park and the Concourse Medical and Professional Plaza. Buildings that the developer has built to lease and continues to own include: Acordia, Ameritech, General Electric, Ferguson Enterprises, Jack Frost, Chirochoice and many more. The developer plans on owning and leasing over 50% of this commercial park. He will be a present owner and neighbor in this development. We are pleased to provide to the Commission the covenants that bind the developer to these commitments made to you today. We are also pleased that a number of individuals came this evening to show their support for this project and hope that they will have an opportunity to share their comments with the Commissioners. I'm going to provide you with a...I have letters and I'm not going to read them because we simply are not going to have the time, but you do have them as part of your packet from Steve Melcher, City Councilman in support of the project, from Michael Hall, President of Jack Frost, from Jim Mueth, President of Complete Lumber. Members of the County Commission, I began my remarks by reminding you that your decision tonight was a simple matter of land use. That has not changed. However, since you consider all of the other elements of development including transportation systems, utilities and drainage, it is only fitting that you also consider the impact of this development for jobs in this community. Simply stated, it is time for Vanderburgh County to decide if this is going to be a community that welcomes industry and commercial development or are we going to be a bedroom community providing a work force for Toyota in Gibson County, for AK Steel in Spencer County, for Agricon in Daviess County? Without industry tax base to support our public services our property taxes for individuals will skyrocket. It is time to decide if Vanderburgh County is open or closed for business. I have two individuals that I would

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really like to just say a couple words. Al Folz is here to talk a little bit about property taxes and then Bill Bartlett if you have any questions for him regarding land use.

Al Folz: Good evening, I'm Al Folz, 658 Trinity Drive. I'm here in dual capacity this evening, not only as Knight Township Assessor but also as a Vanderburgh County taxpayer. I've know Bob Woodward for many, many years. I was present at his first development out on Old Boonville Highway and Kotter Avenue. I've seen land that we had assessed at basically \$495 an acre and all of the sudden it's \$17,850 an acre. Now this is an industrial park. I've never seen on any one of his developments him asking for tax abatement and he surely does not have any exempt properties. I am not one of Bob Woodward's favorites because every May and November when taxes come due he always finds me. He always finds me. But to be able to do this, to be able to pay the taxes like he has, and Carol has already talked about some of his developments, I'm saying that we've got vacant land, undeveloped land, going from \$495 an acre to almost \$18,000 an acre that's when you're looking at an industrial site. When your looking at Professional Concourse off of Washington Avenue you're looking at \$495 an acre and it's going to \$87,000 an acre because there you're getting into medical office buildings. You look at Lloyd Office Park, what is that about 40% developed out there? The Othmar brothers they had this at \$495, they've grown corn on it. It wasn't a very large patch at that particular time, but here's another one where we're looking at \$495 an acre and that's going to \$87,000 or more than that. I think that's going for close to \$92,000 an acre. So you can see what I'm bringing forward here as the developments that Mr. Woodward has risked his money in, he is a risk taker, I've seen him work with many, many people as far as being a good neighbor. Whatever we can do on undeveloped land to help the tax base in Vanderburgh County is going to help everybody. Taxes are too high. How many times do you hear that? I hear it all of the time and I'm sure you realize that. But when we're looking at developments we can see that something is there that can help being able to say, go from \$495, and in this particular case when we are looking at 110 acres, you're looking here at an industrial park, now you can have part of an office, if it is that land would go to \$87,000, but if it's still going to stay at an industrial site then we're looking at \$17,000 an acre. Now this is just the land. I've not mentioned anything about buildings that are going to be put on the land. I figured one up the other day, 4,000 square foot, it was a metal kit building, it wasn't nothing fancy by any means and just the taxes, not the assessed value, the taxes on that building is going to be about \$5,000 a year. So you can see that type of money added to the land, you can see what is happening as far as development is concerned. So I've seen him develop property. I've watched it. I've read about him in the newspaper a few times, but I don't think that you can be progressive without having something that will show up. So, I do recommend that the Commissioners approve this zoning. Are there any questions?

Commissioner Jerrel: I just have a question--

Al Folz: Certainly.

Commissioner Jerrel: --and it may not be of interest to anyone else. What happens in Knight Township if there is a need to increase taxes for any reason at all if this land is in a TIF zone? What happens to the taxpayers that are outside that zone? Will they pick up the increase in the cost?

Al Folz: Well, I think you've just seen it. I think you've just seen what happens when you have a TIF zone because what we have out here on Burkhardt and Lloyd...I'm glad you asked that question, thank you. But you see out here on Burkhardt and Lloyd and you see this nice great big division going up in there, Circuit City and all those, those are TIF districts aren't they? The people of Knight Township do not see any of that money. Very, very little, because it is made to widen Burkhardt Road. This goes all the way down. It takes half of Kmart. Whoever put this together actually took half of Kmart over there on the other side. I've heard, well, they didn't mean to do it, but it's there. But what we find...TIF zone is for a long time. It is almost like a tax abatement. It takes a long time for the citizens of Vanderburgh County to realize it. Knight Township is suffering for it because look at the revenue we could have there. Look at Builder's Square sitting out there, all those fine restaurants sitting through there. O'Charley's, all of this. That's a TIF zone. How long is that? Ten years?

Commissioner Jerrel: Twenty.

Al Folz: Twenty years. Twenty years all this building sitting out there and the people of Knight Township are not getting any benefit of it. I think we went up 12 cents because, because of the TIF zone this time. Sure have. Now across Lloyd where we have Lloyd Park where Mr. Woodward has built, that's not a TIF. That's okay on that side over there. Bob, I wish you would build faster on that side over there it would really help us on this thing over here. It would really help us. Any questions?

Commissioner Tuley: Al, I'm sorry, but I'm a little confused about your position on TIF. You're not for TIF?

Al Folz: Well, I think we should look at it in a different manner. I mean, when you're taking a whole big development such as what it has there in that corner, let's just take the corner and that's just the first phase and remember now you've got two phases in this because we've put all this together as far as property records, everything on this, but you've got the second phase still coming down on this thing. That takes in a tremendous amount down in off of Morgan Avenue on those huge apartment complexes down through there. I think we need to take a better look at this thing and say let's give the homeowners a break. Let's give the taxpayers a break on this TIF. Not for twenty years and they don't see anything for twenty years. I think there's just a better way of doing it.

Commissioner Tuley: I'm not wanting to debate you on TIF other than we've got that development at that corner, how do pay for the widening of Burkhardt Road and that beautiful, it's a mess now, but eventually it's going to be, it's going to move that traffic and there is no money to pay for it without the revenue

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from the TIF? That's my only--

Al Folz: Well, I think it penalizes the taxpayers though when you do that.

Commissioner Tuley: It does to a certain degree. That is correct.

Al Folz: Certainly, and I just feel there is a better way of doing it, Pat, and I don't have it off the top of my head either, but there has to be a better way than penalizing the taxpayers. Thank you.

Carolyn McClintock: Thank goodness we're not voting on TIF tonight.

Bill Bartlett: My name is Bill Bartlett, I reside at 5820 Beaver Trail. I am a real estate appraiser. I've known Mr. Woodward for twenty-some years. I've worked with Mr. Woodward for about twenty years. I do appraisal work on his projects and some of the developments that he has done. I have found Bob to do a very fine job of development. Bob asked me to look at this proposed project of his, and, Pat, to be honest with you about the TIF, maybe more of this should be done because rather than purchasing Burkhardt Road at \$100,000 an acre for land, you've got Mr. Woodward that is going to donate the right-of-way to you. If you had more of that done you won't have to have TIF. So, I think this is a tremendous opportunity for the City of Evansville and Vanderburgh County to get development done, to bring sewers and water into a neighborhood. What you see when you go out to Burkhardt Road and the cornfield that's going to be Lynch Road, is you see cornfields. That's all that's there, that's all we've known there. But within a year you're going to see Lynch Road developed. It's not something that's proposed, it's going to happen. The funding is there, it's going to be paved, and you're going to see cars on that road. After that's done that property is no longer a farm, that's going to be development property. That property is going to be much like Division Street, the Lloyd Expressway today, on the east side of town at I-164 interchange. Unless we look to developing that interchange early and putting the road improvements in, the infrastructure in now, it's going to be very costly to do. That was just fifteen years ago that was farmland. Fifteen years from now you may see the same type of development there. I would encourage you to rezone that to permit the industrial and commercial development there. I think that is the highest and best use of that property. Thank you. Any questions?

Carolyn McClintock: Mr. President, we had several other people that wanted to speak tonight, but I'm sure we're probably over our twenty minutes, so we'll pass this sheet around and get their names so you can have their names.

President Mourdock: Thank you. For the remonstrators who will be speaking, Ms. McClintock was right. She was well beyond her twenty minutes and I will not--

Carolyn McClintock: The TIF discussion.

President Mourdock: --not totally, Carolyn. At any rate the same courtesy will be extended to you to lengthen your remarks somewhat. However, I would still emphasize what I said before, please don't just get up and say the same thing that the person before you spoke about. So with that, again, because all of our minutes are verbatim when you approach the microphone, please state your name and your address for the record.

Mark Imil: Hi, my name is Mark Imil. I live at 2930 Gardenia Drive in the Country Trace Subdivision. I was noticing the first board that was put up and I noticed that residential was supposed to be in green, but somehow our subdivision got left off. We didn't get a green square on that first board, so--

President Mourdock: Just for the record and since it wasn't on the board, would you want to walk to the map and identify where you live for everyone's benefit? Is it not on that photo you just put down?

Mark Imil: Well, it's on there, but my point was I don't see a green mark, this is all residential here, this is the Country Trace Subdivision, this is Peacock Lane down here. So, I don't think that board really is accurate to show the true residential--

Carolyn McClintock: That's a copy from the Area Plan Commission.

President Mourdock: Okay.

Mark Imil: Anyway, I just wanted to state that point. Being a homeowner in the Country Trace Subdivision we are very concerned about what this development will do to our property value. These are established homes in established neighborhoods. Many of these homeowners are first time home buyers and the question that needs to be asked is how will this affect the resale of our homes in this neighborhood being completely surrounded by dark purple? I would venture to say it would be a death sentence for us to try to sell our homes once this industrial park goes up. I would like to thank the Area Plan Commission for their no vote on this proposal and, you know, if I could use Mrs. Cunningham's remarks that industrial does not mix with residential, that's exactly what this is going to be. Industrial will be mixing with residential in that area. Also, I really can't think of any other area in Evansville where there is a development going up that is industrial going up next to a residentially zoned area. I can't think of one right now, and I can't imagine that there is one. I saw on the news tonight before I came in that Mr. Woodward says that this would be a message to businesses that would like to relocate to Evansville. Well, I mean, I'm all for progress but every business we've heard that is going to go in here is existing business. So progress is good, but from what we can see it's just relocation of existing business. Another thing that I would like to bring up is that there has been virtually no progress with Mr. Woodward's property at the corner of Morgan and Burkhardt. That site is a mess and I think everybody would agree. Will this property be the same? Will, you know, the only thing that'll be on this property is the eight double sided billboards that's on the Morgan Avenue and Burkhardt Road property? You know we just keep building and

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building on Burkhardt Road, but there seems to be no solutions to the traffic problem on Burkhardt Road. The businesses that Mr. Woodward is speaking of, he's talking about C-4 businesses, so why do we need this to be M-1 industrial rezoning? M-1 is specifically, I would say, that it is for the larger billboards that he could put up in that area. But all the businesses that he has described to us have all been C-4 businesses and that's not why we're here tonight. We're here tonight to hear M-1 rezoning. M-1 rezoning would be chemical processing, repackaging, it could be an auto body shops. I mean, really, it's a blank check for Mr. Woodward to put anything, any type of light manufacturing, in that area. In closing, I would like to say that we didn't have time to prepare any vote no stickers tonight, but I keep hearing that this directly is going to affect local progress and everything, I would wonder how many people in this room are going to be directly affected by this rezoning? The homeowners are going to be the ones who are going to be impacted the most with this rezoning. The Area Plan Commission voted ten to one to not recommend this development. If you vote yes, then we're talking about taxpayer's dollars, why do we need an Area Plan Commission? Why do the taxpayers need to fund that if we're not going to take their recommendations? Also, if you vote yes to this rezoning, what message does that send out to the homeowners of Vanderburgh County? Thank you.

Jeff Norrington: Good evening. I'm Jeff Norrington. I live at 3300 Durre Lane which is about two blocks from this development. Carolyn was right when she said it was bounded by I-64 and Lynch Road. The problem of it is you can't get to none of that stuff. Lynch Road, last time they said it would be...what? Maybe five years before it goes from Burkhardt to 164, so where's all that traffic going to go, the semi traffic? It's going to come right up Burkhardt Road. Now Burkhardt Road is a mess already. If you get on the other side of Old Boonville Highway you can see that the road is...the semis have just torn it to pieces and when they redone the bridge on Hirsch Road the trucks, rock trucks, the concrete trucks that went down there tore...you had to redo Burkhardt Road then. What's it going to be with 80,000 pound semis on it? I think it's time that we stopped building stuff and then trying to let the infrastructure come up to it in this county. It's time that you take a look at these signs, too, that say "vote yes", and if you'll notice the background is red and red always means stop and look. So, I wish you all would do that. Thank you.

Lisa Kohl: Hi, my name is Lisa Kohl. I live at 6113 Peacock Lane. Members of the Board, in the opening statement at the Area Plan Commission Mrs. Cunningham read that it was stated that the M-1 zoning is considered incompatible with residential. We all know that the definition of incompatible is unsuitable for association with. Folks we're already there, not to mention that there is no appropriate infrastructure in place. How can we even then consider to rezone this to an M-1 zoning? I'm amazed that Mr. Woodward could even equate the demise of the economic growth and development of Evansville to the rezoning of 113 acres that are simply a relocation of already existing companies. There are plenty of other appropriate locations for an M-1 industrial park with appropriate infrastructure already

in place. Not a two lane road populated with residential housing and day care centers, with no water, no sewers and no roads to facilitate that kind of traffic. Mr. Woodward is like any businessman. He paints a beautiful picture and he tells a great story based on ifs and somedays and estimations, but where are the facts? His goal is to make money. He's not concerned with what happens to that area after he develops it. The residents are stuck to deal with what's left. Mr. Woodward doesn't have to put his children on a school bus right on Burkhardt Road. I do. It's absolutely frightening to think that the area being developed light industrial, and knowing my child's school bus is going to have to stop, or try to stop that type of traffic to let my child out and to go across that. I ask that some of the brand new Board members that you do send a message. A message saying that Evansville will put an end to irresponsible rezoning without regard to residents and appropriate infrastructure. I challenge you to make that stand.

Robert Stallman: My name is Robert Stallman, I live at 17318 Highway 57. It just seems to me that we could all draw these pretty pictures, but the simple fact is if you go down in that area where we're talking about development, on the other side of Burkhardt there's water standing there right now. All these pretty pictures show that all the water goes the other way, but from what I see just standing there looking at it, that's simply not the case. Now if they raise everything up two foot and say it's going to go somewhere else, you know. You guys should maybe go out there and look, jump on a bus go out there and actually see the area. I mean it's nice and dry up here on the third floor. Also, too, I'm kind of curious about Mr. Folz's glowing recommendation of a developer. That seems to me kind of funny where a tax man is maybe looking at his hip more than he is...I don't know. It's up to you guys to judge.

Mitch Bunner: Good evening, gentlemen, ma'am. My name is Mitch Bunner, I live at 8355 Kifer Drive in Newburgh, Indiana. I'm here tonight speaking on behalf of my parents, Walter and Wilma Bunner, who live at 6318 Peacock Lane, at the corner of Peacock Lane and Burkhardt Road. A lot of the words I'm speaking tonight are my dad's, I've rephrased them so they flow coming from me. The petitioner has presented a proposal to rezone 110 plus acres of agricultural land to an M-1 classification. This is not really a plan to rezone. He's only asking for a blank check rezoning classification where he can use it for whatever future needs he has in mind. According to Barbara Cunningham, this project is premature. There's no proposal for a sewer, no proposal for water and roads that can't carry the traffic. For Mr. Woodward to blindly offer four lane highways on his property, he can't extend it beyond that. Are we to go four lane to two lane to Old Boonville Highway? We wish to emphasize that the 140 plus homeowners of the valley are not the ones asking for change, nor do we feel that we should have to prove anything. The petitioner cannot show, and has made no effort to show, that rezoning would not adversely affect the existing homeowners who have built and purchased homes under the present agricultural and residential zoning. There are approximately 140 homeowners who would be affected by your decision. Forty plus of these homeowners have wells which provide them with all



their household water. The system is so fragile that they are constantly worried for fear of running out of water or of well contamination. The petition for rezoning does not address this. Mr. Morley briefly touched on flooding not affecting because it is moving north to Boesche Ditch. These are pictures of Boesche Ditch after a two inch rain. Water backs up when one area gets flooded like Boesche Ditch. The neighbors here have sand bagged homes on Peacock Lane and on Fitzgerald Road because of Boesche Ditch backing up. I'm surprised he didn't show it flowing into the Gulf of Mexico, he went that far away from this development. Furthermore, the crown jewel business the petitioner mentions, Combs Landscaping, is one that would be compatible with residential. However, commercial nurseries which rely on the use of Malathion, Merit, Two Four D and other unrestricted herbicides and also the use of restricted herbicides which you and I cannot buy to control weeds are hardly compatible with residential homes using wells, including north of that property. In the petition to rezone there are no plans submitted that would limit in any way the use of the land regarding critical areas such as noise and water pollution. Noise pollution in that area; I work for a redistribution facility like Mr. Woodward has talked about going in there. We start operations at 4:30 in the morning, so does Frito-Lay. We run until after midnight, so does Frito-Lay. Are the residents of that area of such little concern that we can allow that in their neighborhood? The amended signage proposal calls for a billboard 100 feet south of the Lynch Road extension. These are the exact words of my dad:

"While our view of the stars and sunrise may come and go, it is hard to get excited about the thought of our first sight each morning and our last view each night being the glow of an electronic billboard 50 feet from our bedroom window."

That's what my parents are facing. No real attempt has been made to explain to the existing property owners what is really intended. Nor has any attempt been made to get their support or their input from the beginning of the rezoning proposal. We have heard rumors of possible tenants such as distribution warehouses, etc. As one of my colleges mentioned, there are several school bus stops on Burkhardt Road every day. Frito-Lay runs 37 route trucks a day, 2 bulk trucks, and 6 merchandising vehicles. Colonial Bakery would run at least the same. Those will be leaving in the morning and arriving in the evening at the same time the kids will be dropped off in that area. Where's the traffic study? Where's the plan to deal with this concern? They speak in terms of Lynch Road being done, or being done this year. It has not moved yet. It's dirt and that's all it's been for the last couple of years. Is the whole east side of Vanderburgh County going to be zoned commercial without thought given to the impact on existing homeowners? On sewage? On roads? Flooding or the quality of life of the people who have settled there? Again, I want to make this point. It is not we who are asking for change, nor is it our responsibility to eliminate the negative impact the rezoning would bring; that is the petitioner's. These concerns have not been met and we are totally opposed to any rezoning attempt. We feel that a realistic approach would be for this Board to deny the request.

If the rezoning were approved and business construction takes place, the county will eventually have to purchase some land at commercially zoned land prices costing the taxpayers much more than at this time. According to the County Engineering Department, there are no plans to widen Burkhardt Road north of Virginia Street. Super Kmart has been in existence for three years. Do we have to fight this for ten years, for fifteen years before anything begins to be thought about that way? According to the existing laws in order to build on a floodplain the property would have to be raised two feet above the floodplain. When you blacktop 110 acres, when you raise 110 acres there is no where for water to stand. No longer can the ground reach the saturation point, that water will immediately run off. There are four areas in which you are looking at this attempted zoning proposal. Proper land use; this is probably the only development of its kind surrounded by residential and agricultural. No businesses historically or at this time in that area that would be smack dab in the middle of an industrial park. Aid and overall development; there is no development in this area. This is a residential agricultural area. Disjointed zoning areas detract from the overall plan of a community. There is no benefit in moving existing businesses. To conform with the stated plan this is a residential agricultural area until at least the year 2015. Long term best interest; well, for forty years my parents have built a home in that valley. Having raised their children they hope in their retirement to enjoy the home they purchased in an agricultural residential area. Historically and to this day there are no businesses in this valley and to suddenly change this neighborhood is a destruction of the dreams of the 140 families who have purchased their homes believing they were protected by any Area Plan Commission twenty year plan. For the safety of their children and grandchildren living in this area, to ensure the quality of life for the residents in this area and to build upon the stability of twenty year land use plans, we ask that this Board deny the petitioner's request. Thank you.

Mayetta Champion: Yes, I'm Mayetta Champion. I live at 6319 Peacock Lane at the corner of Burkhardt and Peacock Lane. I would like to know if there is one person here with a vote yes on it that lives in our area? That's all I have to say.

Tina Kennedy: I do.

Mayetta Champion: Where do you live?

Tina Kennedy: I live in Executive Manor.

Mayetta Champion: Where is Executive Manor?

President Mourdock: Excuse me, if you would please state your name.

Tina Kennedy: My name is Tina Kennedy and I live at 344 Kimber Lane which is right by Super Kmart. I work here as a--

Mayetta Champion: That's not in our area.

Unidentified: You're a mile away.

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Tina Kennedy: It's right off of Burkhart Road--

President Mourdock: Okay, excuse me. The only speaking that will be done will be at the microphone, so please go ahead.

Tina Kennedy: I work as a waitress here in Evansville and I'm a single mother and I live literally paycheck to paycheck. There maybe inconveniences to some people, but I think the benefits far outweigh the inconveniences to...what? A 140 people. It would create a lot more jobs than that. I get tired of seeing jobs going to other communities that could come here to Evansville. I like Evansville. I want to live here. I want to work here, but I have considered moving because of the job market here. That's why I think that this rezoning should be passed. Thank you.

President Mourdock: Any other speakers wishing to address this issue?

Thomas Champion: I'm Thomas Champion, Peacock Lane. The first thing I want to say is when they put the new bridge in on Hirsch Road it was supposed to be up out of the flood water. About every spring that bridge is under water. When you get out Burkhardt Road just past where we live it looks like an ocean and they're going to try and push more water into Pigeon Creek? Pigeon Creek can't handle what's out there now. When you look out your front window before the Lynch Road build up was there and it looked like an ocean in the morning, it scares you. We've sandbagged houses out there. Like I said, Pigeon Creek is taking all of the water it can possibly take and they keep pushing more water out there on us. When you raise this over across the street from us and you blacktop that and put all those roofs in there, we're going to be in big trouble. I don't care what anyone says, they need to come out there in the rains and take a look at it. Up on the corner of Peacock Lane is under water half of the time when it rains now. So take good thought. That's a big floodplain out there.

President Mourdock: Thank you, Mr. Champion.

Rosa Lateulere: My name is Rosa Lateulere. I live on Peacock Lane and I have lived there for about seven years. I wasn't going to speak tonight, but I have to. I'm sorry but I have to, I couldn't keep quiet. First of all, this lady that just got up and said she's directly affected by this proposal and she is not. She is way down at the other area. But if you would like to buy my house I will sell it to her for the price that it is for sale right now. I'm not going to sell it, but if Mr. Woodward gets his wish I will have to sell it and I will get half of what we paid for it. We have to pay flood insurance right now and if he builds in there...I have seen the water going up every time somebody builds around. Like Lynch Road, build around it the water goes up higher. They built Green River behind us it's going to go higher. I just saw that you passed some other site on Green River Road right behind where we are. That's going to build up in there and then we are going to be a wading pond. So, I would like to know if Mr. Woodward would put in writing that he would buy my house at the price that it's worth right now before he starts building? I would be

glad to sell it to him when it is under several feet of water. I also have children, by the way, and I'm also concerned about that traffic in there because when they were building Lynch Road...I mean, Green River, I'm sorry, our lane...we couldn't even get out of there. Green River was so congested that we couldn't even get out of there and it will get worse. I am sorry to say this, but this lady has no idea on what we are going through. So, I hope and pray that this does not go through for several years down the lane. Thank you.

President Mourdock: Thank you. No other remonstrators? Carolyn?

Carolyn McClintock: I think there are some other people here that want to speak is the word that I'm getting. They're not remonstrators and they're looking at me saying can we speak? So, I don't know if you want to allow them to speak, I mean--

President Mourdock: Remonstrator is not a term of for or against at least in my dictionary. It is simply people who are affected or feel they are affected by the issue. However, having said that let me say again at the outset, please only if it's new information.

Steve Rudolph: Commissioners, I'm Steve Rudolph. I'm president of J.H. Rudolph and Company. We are asphalt and concrete paving contractors. I live at 10641 Coach Light Drive in Evansville. I was very pleased to receive in the mail today the packet from the State Highway Commission for the proposed bidding for the Lynch Road project. They've been advertised for the March 11th letting through the Department of Highways, the plans are here and I want to make you a little aware of the significance of the project in review of Mr. Woodward's proposal. The construction itself in these plans includes over 90,000 square yards of concrete, 16,000 cubic yards of stone base, and that equates to about 85,000 tons of materials that are going to be hauled into this area to construct this road. That's well over ten thousand truckloads in and out of this area during the construction phase alone for the section of Lynch Road from Oak Hill Road all the way to Burkhardt. The concern that I have is not only for the neighbors who are going to face this construction during the next year, and this is advertised to be bid on March the 11th and it's due to be completed in 140 work days, which is a little over a year. So, most probably by spring of 1998 you'll see a lot of traffic on it. In fact, so much traffic that the traffic count in this project is estimated in 1997 to be 16,892 vehicles per day that cross that area and projected by 2007, 29,211 vehicles with a heavy truck count daily of 2,921 vehicles per hour. The interesting thing about that is when the project is completed in spring of 1998 all that traffic is going to have to come to Burkhardt Road and get on that single lane road to get in and out of this area. I think that the Commissioners at this point and the taxpayers of Vanderburgh County have a very unique opportunity in that this development Mr. Woodward is proposing comes at an excellent time for these residences. The opportunity that they have at the present time is that Mr. Woodward's donation of the right-of-way for the Lynch Road extension to I-164 and the interchange with I-164, as well as the right-of-way for a proposed widening of Burkhardt Road are

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extremely exceptional gifts to the taxpayers. In addition, the installation of the water and sewer lines in this area are going to greatly help not only the development, but all the properties around this area. I'm extremely concerned that we're building a road to nowhere at the March 11th letting and these folks are going to be faced with several thousands of cars each day going down a two lane Burkhardt Road. I believe this project and the proposals that have been made will certainly enhance the development in the area for all the homeowners and property people, but it will also relieve these poor neighbors of that terrible burden of traffic by going ahead at a very quick pace and opening that to I-164. Thank you.

Chris Combs: My name is Chris Combs and I live at 7386 Hillside Drive in Newburgh. I'm the owner of Combs Landscape and Nursery. Yes, we are one of the ones that's hoping to buy some of this property that's going to be rezoned. As far as the relocate is kind of what I want to hit on because that's really the only thing that hasn't been covered. I'm attempting to relocate my company in Vanderburgh County and stay there. I've been very fortunate for fourteen years that I've owned my company that is has grown to where it has. We're currently located in Vanderburgh County on less than four acres. We've very much outgrown this location and we've got to move. There is no question about it. Within a year or year and a half we have to move. There's nothing more that I'd like to do to keep my tax base and every thing in Vanderburgh County, but right now we've been looking and we have not been able to find anything for almost three years. We're going to need about twenty acres. If you go into a lot of the places that are already zoned commercial and everything for a landscape company selling bushes at six or seven dollars or twenty dollars it's kind of hard to pay for \$100,000 an acre ground. So we've been looking very hard. So, if this isn't approved then you're kind of putting my company in a position that we may have to leave Vanderburgh County and it's something that we do not want to do. That's the reason that we are relocating. That's all I really have to say. Thank you.

President Mourdock: One question, Mr. Combs. I want to be sure I understand the point that you just made. You said that presently you're working on three or four acres and that's not enough to sustain your business.

Chris Combs: That's correct, yes.

President Mourdock: That's over off of Fuquay?

Chris Combs: Off of Kathleen.

President Mourdock: Okay, I'm thinking of the right place.

Chris Combs: Off of Pollack Avenue.

President Mourdock: Right, you said you'd rather something like twenty acres, so is that what you're looking at here is about twenty acres?

Chris Combs: Well, we're planning approximately sixteen new

buildings, most of which are greenhouse type structures and it takes a lot more room than what we're doing. We are also wanting to do some growing of our own plant material which we are not allowed to do because we are so stringent on land and everything. In reference to chemicals and that type of thing we drink the water at our own place.

President Mourdock: Yeah that wasn't my question. My question was more on the acreage. So you're saying your going to have sixteen buildings or some number--

Chris Combs: Actually, it's probably going to end up being more than that, but most of it is greenhouse structures. But initially, yes.

President Mourdock: And that will take about twenty acres of what you're looking at with this particular site?

Chris Combs: We're probably going to use about fifteen acres of it as far as our growing production, other than our tree farm, which will take about five acres, which you have to space out the rows twelve foot apart as well as a double row six foot apart where we can put our trees and grow them on to larger size. So we're planning on using the whole area, but we're wanting to move to one site.

President Mourdock: Sure, I can understand that. Okay, thank you.

Chris Combs: Thank you.

Charlene Timmons: Excuse me can I change the tape please?

President Mourdock: Yes, please, Charlene go ahead.

#### **Tape change**

Jack Rogers: My name is Jack Rogers, I reside at 447 South Roosevelt Drive. I'm here hopefully to...I've heard some people mention about well, we're just relocating existing businesses. In the economic development discussions that I've listened to that's the most vital part of being able to have an expanding economy because 85% of the economic growth that takes place within a community is through the expansion of existing businesses. Businesses that can no longer work in the areas that they are located in, that have outgrown them. I think that's a very important part. As you know I-164 runs right down the Vanderburgh/Warrick County line. In the battle for tax bases it's not a difficult task for somebody to skip over on the other side of that line and I believe that puts the real estate tax base then in Warrick County and I believe that we have a local income tax as well and that prevents us from collecting employment...or income taxes from those people that would work in such a facility whether it's Warrick or any of the other counties. So, I think this is a vital thing for us and I hope we're able to take a good long-term focus on it. I appreciate your listening to my remarks.

Bruce Mortenson: I'm Bruce Mortenson, president of Castle

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Contracting Company. I live at 5509 Timberlake Court in Evansville. The reason I came up here tonight is, as a contractor and a developer, I'm seeing too many of the buildings that I build going out of this area because we fight the people that want to locate here and we don't provide facilities for them to locate. I'm currently building a 66,000 square foot plastics plant in Henderson, Kentucky. These people looked in Evansville. They discarded the idea because they weren't provided the right properties or the welcoming. I'm also getting ready to build a 44,000 square foot building at the Owensboro Airport Industrial Park, again, for the same reason. I make my living here. I have no interest in this project as an owner. I would hope maybe to be lucky enough to develop some buildings on it at some future point. But my point is I think we're losing too many jobs to adjoining communities because we aren't providing the facilities for growth. Thank you.

Hope Roe: My name is Hope Roe and I live at 7125 Olive Street. I'm a mother first of all. I'm also a business owner and a homeowner. I have two high school children who I am concerned when I look at a lot of jobs, future jobs, potential employment opportunities leaving Evansville. I had a lot of things written down and I thought I'd make a real point about, but I just want to make a personal point. I understand your concerns because two years ago...I live in a neighborhood that's bordered by the Lloyd Expressway and the Lloyd Office Park has gone in there. I was concerned, too. I wasn't thrilled to think about anything but homes surrounding my home. But Mr. Woodward...every promise that he made to us, every plan that was thought out, was kept. It is very, very well done. All the traffic has been taken care of. The park itself looks beautiful. Like I said, I wasn't really thrilled, but now that I look at it now that it has been developed and it's fine. So, I just wanted to make the point I do understand, I understand how you feel.

Steve Roe: I'm Steve Roe, I live at 7125 Olive, also. I'd like to tag on to something my wife just mentioned. You know, I think that we're all personally affected by this whether we live there in that subdivision or not, whether we're concerned about jobs for people in Vanderburgh County. There's a lot of fine people in this room, Tom and Mayetta Champion over there built our first home. They did a good job, they're good people. I am concerned that they are concerned. Likewise, Bob Woodward is a good man also. I worked with him twenty years ago at Sears. Tom and Mayetta built our home and they made, hopefully, a profit doing it. Bob just sold an office building for me, his real estate company, and he made money also off of that. So we're all concerned whether we are a big businessman or whether we are going to a factory job every day, everyone is concerned about opportunities for their future and their family's future. I'm concerned about the opportunities for my children's future in businesses here in Evansville. There's nothing wrong with businesses here in Evansville expanding and providing more job opportunities for the people that live here. Thank you.

Mark Imil: Mark Imil, 2930 Gardenia. That wasn't industrial going in your backyard. That wasn't industrial going there in her backyard.

Kirk Mitchell: My name is Kirk Mitchell. I live at 645 Salem Court. I'm President of Business Furniture Specialist Incorporated and that includes Lea Matthews Furniture & Interiors at 5611 East Morgan Avenue. We have within the last four years opened our retail furniture store and developed our property into a retail and storage facility. We located within this area because of the anticipated growth and development that would surround us. Our commercial division, Business Environments, depends on new growth and renovation. We've been fortunate to work with several of the new facilities locating in the east side developments such as Acordia, GE, AAA, Ivy Tech and others. Continued logical growth and development of this area is as requested here as a business park. Vanderburgh County has not been successful in landing some of the larger manufacturing employers lately, but we certainly can benefit from the spin-off of suppliers and service entities that will surely locate within the Tri-State area over the next few years. I hope to see these business on our side, or the Vanderburgh County side in regards to tax lines. The question tonight, is the Commission here to promote Vanderburgh County growth and increase tax bases or to limit logical development with good potential returns to the county? I vote yes for Vanderburgh County on that growth.

President Mourdock: Thank you.

Michael Hall: My name is Michael Hall. I reside at 4455 Ashbury Park Drive in Newburgh. My business is located at 5701 Old Boonville Highway in Evansville. I'm the President of Jack Frost. Three and a half years ago I began my business as a new business, not as a relocating business. I began it in a very small building, we grew rapidly and we needed to have a new building built for us. We chose Bob Woodward to do that for us. Bob's help in putting that whole deal together for us in a new building was instrumental in our growth. Today, three and a half years later, we employ between sixty and seventy people all of whom impact economically the Evansville area. I'm very, very proud to be associated with Bob Woodward. He's a fine man, he's always done what he said that he will do. I urge you to approve this.

President Mourdock: We are at the moment where I don't see anyone rushing to the microphone, so with the idea that we will be voting on this by 9:00 which is some twenty minutes away, I would open it up for the Commission members to ask questions of either the petitioner, his representatives,--

Thomas Champion: I would like to ask the owner of the nursery that is talking about moving out there, what are you going to put on the corner of Burkhardt and (inaudible)? I hear it's a service station.

President Mourdock: Mr. Champion, thank you. You'll get the chance to answer that question in just a moment. First, again, do we have any questions from the Commission to the petitioners or any of the remonstrators.

Tim Born: I just want to point one thing out. I know Mrs. McClintock innocently, mistakenly referred to the private



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covenant which has been executed by the owners and the petitioner as a Use and Development Commitment. It's not. It's a private covenant which is enforceable, but the Use and Development Commitment that accompanied the petition for rezoning, unless you have a different copy, is not signed by the owners.

Carolyn McClintock: Yeah, we do. It's signed by the owners.

Tim Born: Oh, you do? Would you bring that to the file so we can put that...I thought maybe you were referring to the private covenant.

Carolyn McClintock: It's here. We'll find it.

Tim Born: Good we'll just make it part of the file then. I'm sorry, I thought you were talking about--

Carolyn McClintock: We have two, we have a Use and Development Commitment and we have a covenant.

Tim Born: Good, alright.

Carolyn McClintock: Both executed by the owners of the property.

Tim Born: Good.

Carolyn McClintock: Mr. President, am I going to get an opportunity to rebut?

President Mourdock: Please, yes.

Carolyn McClintock: I just want to quickly...I know you've heard all this, but just very quickly reiterate the different points that I made in my presentation earlier. First of all, this rezoning is 100% consistent with the plan developed by your Area Plan Commission, by your professionals that do the planning for Vanderburgh County, and they have said that this should be industrial and commercial. It has also been stated by two licensed land appraisers. Secondly, the developer will install at their expense all the utilities for the project and make water and sewer available for the neighbors. These additional customers provide more revenues for our water and sewer department and increase our water and sewer bonding capacity. Thirdly, the developer is donating over twenty acres of land for road improvements. A total donation of \$1.2 million. If this rezoning is not approved this property acquisition could cost in excess of \$2 million and delays which will result in increased construction cost as well. Fourth, the county and the neighbors are protected by the Use and Development Commitments and the covenants that have been presented. Fifth, the drainage plan will adequately address drainage for the development. Floodplain construction is supervised by FEMA and this group, acting as the Drainage Board, will, again, hear the specifics of the drainage plan at a later date if this rezoning is approved. That happens prior to Subdivision Review. Sixth, the development will provide jobs for our citizens and provide additional tax revenues for infrastructure improvements

throughout the county. I will remind you that 50% of these buildings will be owned and leased by the developer. Earlier this evening you acted upon a rezoning. It's in the same neighborhood. It went to Area Plan Commission and had the same kind of concerns. The infrastructure isn't quite there, their Use and Development Commitment had some problems here and there. That rezoning, same neighborhood, got approved here at this Commission 3-0. That heartened me and those that are here on behalf of this rezoning because we believe that's consistent with the Area Plan Commission's recommendation for land use in this area. We believe that this particular rezoning is consistent with land use in this particular area. I want to remind you that a vote for this particular project is a vote for jobs in Vanderburgh County. It sends a signal. Yes, it does to other developers that want to develop in Vanderburgh County. It tells them whether this county wants to have jobs in Vanderburgh County for this community or whether we want those jobs to go outside of Vanderburgh County and just have the workers that work at those jobs live in Vanderburgh County. We appreciate your time this evening and we're happy to answer any questions that you might have.

President Mourdock: Mr. Tuley, any questions?

Commissioner Tuley: I think they've answered about three times, but I just did want clarification and, Tim, I'm going to get on thin ice, so don't let it break under me okay? Stop me if I'm getting myself in trouble. You've mentioned several times because it's contrary to what Mr. Woodward's response was in terms of donating the land at the Lynch Road extension. Area Plan, at its recent meeting, I think the response was we couldn't afford to do that yet. I want to make sure that I heard tonight correctly that position has changed, and I did hear it three times, but that is correct? The land for the interchange is part of your commitment?

Carolyn McClintock: That's right.

President Mourdock: Please, one or both of you, again, you know our sound system, Carolyn, as well as probably anyone in this building, so stay by the mike.

Carolyn McClintock: Yes, that's correct. We are committing to donating up to, I believe, it's 19.4 acres as per the plan from Evansville Urban Transportation Study that land to construct the interchange at Lynch Road.

President Mourdock: Donation by your definition means...?

Carolyn McClintock: The giving of the land.

President Mourdock: At no cost to the county?

Carolyn McClintock: At no cost to the county.

President Mourdock: If I would, Mr. Woodward, would you please come to the mike? Because I want to make sure this is for the record. As Commissioner Tuley said a moment ago, at the first Area Plan Committee which I sit on, I thought the comment was

you would not develop that property for five years or not put a building on that property. At the second Area Plan Committee hearing my recollection is that you addressed the issue by saying that property would be available to the county at the cost that you paid for it. Now we're hearing that 19.4 acres would be donated free of cost to the county. Is that for the record?

Bob Woodward: You either have a fantastic memory or great notes, you're exactly right. I had to call both of the banks involved in this and get their approval. I had to get a signed agreement with the owners. What we are pledging this evening is that we will donate, at no cost to the county, all of the land necessary for the widening of Burkhardt Road and all of the land necessary for the extension of Lynch Road to I-164 and all of the land necessary for the on/off ramps from Lynch to I-164 that lie on the west side of I-164. Nineteen acres is what Mr. Morley tells me in working with EUTS that comes to. If it's 19 fine, if it's 25 fine. Yes, we will donate all of that.

President Mourdock: Where did this idea come from?

Bob Woodward: Where did the idea to donate it?

President Mourdock: Yes.

Bob Woodward: It came from you, sir. It was, I think, something you asked about at the very first Area Plan, if we were willing to consider that donation. It was so expensive and it was so very difficult to make the project work that we simply couldn't commit to that, but now based on the fact that I think this is the way the county is going, I think you're going to ask all developers to step up to the plate and pay their fair share. Vanderburgh County has been very good to me and we're willing to step up to the plate and make that donation.

Tim Born: For the record, I don't believe the Commissioner was asking that donation, I think he was wanting to clarify that you--

Bob Woodward: I fully understand that you're not requesting and you're not requiring that donation on the record. It's at my own free will a gift to Vanderburgh County. The only thing we probably will ask if it's not used within ten years for the county to give it back to us, but we are going to be very flexible on that time frame. It is a gift and nothing more and it's tied only to the rezoning.

Barbara Cunningham: Is that in writing?

Bob Woodward: No, ma'am. I think our attorney talked with Mr. Born and a document needs to be worked out, but we're happy to do that.

Tim Born: Let me do two things. First of all, Bob did you find that signed Use and Development by the owners? Just make it so we can make it part of the record.

Carolyn McClintock: They signed on the front of the whole thing.

Barbara Cunningham: That's the petition.

Carolyn McClintock: Yeah, the Use and Development Commitment is part of that petition.

Barbara Cunningham: No, it's part of the ordinance. It would be part of the ordinance, but let me see. Here it is. This is what has to be signed and it is just signed by Robert Woodward.

Tim Born: With respect...there is a difference. First of all, the Commissioners are aware of this, there's a difference between a Use and Development Commitment and a private covenant. The Use and Development Commitment is signed, that was submitted at the APC, is signed by Mr. Woodward, but the owners had not signed that. But that is not as much concern to me as the fact that the private covenants are, in fact, signed by the owners and Mr. Woodward as petitioner and it agrees to allow Vanderburgh County to bring an action against the owner of the property including Mr. Woodward in the event any of the commitments made in that private covenant are not met. Mr. Woodward has indicated, and if I read that correctly, correct me where I go wrong, the private covenant is very similar if not almost exactly what the Use and Development was. So far is that about right?

Bob Woodward: The only thing that was left out was in the original private covenant we agreed to give the land along Burkhardt. Now since we're agreeing to donate all the land, that was left out of the covenant.

Barbara Cunningham: It's not in there, Bob.

Bob Woodward: Isn't it? Well, was my impression, it may not be.

Tim Born: That's alright because we really don't want to be involved enforcing those things anyway. This is a private covenant. Under Indiana law private covenants can be made and entered into separate and apart from Use and Development Commitments, so that's not a concern to me. But so that the Commissioners are clear, the thing you talked about with respect to the donation of land which is Item C in the private covenant:

"Owners agree to donate land reasonably necessary for the widening of Burkhardt and agree not to construct any buildings in the area of the subject property which may be involved with the Lynch Road/I-164 interchange for a period of five years from the date of the covenant."

What Mr. Woodward is saying this evening, that's not yet on paper is that he is willing to donate, whatever, 19.4 to 23 acres of ground to provide for the widening of that area. That's not in writing, but he's offering that this evening as I understand it. He's offering that, as he indicated, of his own free will and not as a requirement by this Commission or the County of Vanderburgh that he do so in order to obtain a rezoning. Have I correctly stated that?

Bob Woodward: Absolutely correct.

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Tim Born: Are the Commissioners clear now as possibly could be?

President Mourdock: That's worded well.

President Mourdock: Bettye Lou, do you have a question?

Commissioner Tuley: I see a hand up.

Barbara Cunningham: To clarify, there is no Use and Development--  
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Mitch Bunner: We were here tonight--

President Mourdock: State your name please, Mr. Bunner, for the record.

Mitch Bunner: Mr. Bunner, 8355 Kifer Drive in Newburgh, on behalf of my parents again. Point of order, we're here tonight with the petitioner seeking an M-1 zoning classification with what he attempted to pass as land use commitments prior to this meeting. For him to come in here tonight and change those, those should commitments should be made through Area Plan, he's well aware of that. For him to stand up here and say what he thinks you want to hear should not be allowed. You're voting on an M-1 zoning in a residential neighborhood, not M-2 in the middle of nothing. Thank you.

President Mourdock: Mrs. Cunningham you started to say something a minute ago?

Barbara Cunningham: The only thing I wanted to say--

President Mourdock: Make sure your mike is on please.

Barbara Cunningham: I'm sorry. Rob, have you found the signed one by all the owners? Because right now we don't have the owner of record as signing the Use and Development Commitment.

Rob Faulkner: It may not be here--

Carolyn McClintock: I'll sign an affidavit that we have it.

Barbara Cunningham: But it has to be here before they can sign it; before they can do it and that was what was told, too.

Unidentified: We have private covenants. Can I present what those are?

Tim Born: You need to go to the microphone, so the recorder can pick it up.

(Several inaudible conversations going on at once)

Rob Faulkner: Mr. Born?

President Mourdock: Can we have some silence please?

Rob Faulkner: My name is Rob Faulkner, I reside at 5208 North Harlan, Evansville, Indiana. I would note that the verified

petition for rezoning is signed by the owners of record and that as such the Use and Development Commitment that is attached as an exhibit to that will be in the change of title, it will be a part of the ordinance. After they have exercised the options by Mr. Woodward he will be the owner of record and as such those Use and Development Commitments will be enforceable. However, I do know that we do have one signed by the current owners of record which are in our file and I apologize for the...this thing's been going on for three and four months and I also--

Tim Born: Now would be the time to find it.

Rob Faulkner: Okay, and I would also note that the private covenants are enforceable by, not only Vanderburgh County, and they are enforceable by the owners within a one mile radius of the area to be rezoned. Those covenants are to the benefit of those owners and are enforceable by Vanderburgh County. So everything is fully enforceable. Although we do have the executed Use and Development Commitment by the owners, it's rather red herring to pretend that all of the sudden these obligations are illusory even if we didn't have that document.

Tim Born: I'm not indicating that. You don't have that impression--?

Rob Faulkner: No, no. No, Mr. Born, I wasn't directing that at your remarks.

Tim Born: No. All I'm simply saying is that the petition was filed subsequent to that date and it was signed by the owners. And subsequent to that date for the last APC meeting a Use and Development Commitment was entered into by Mr. Woodward, as petitioner, and the document just erroneously indicates that he's the owner. I think you cleared that up at the time that you were with an option. What the APC has suggested was that they simply have the owners sign that Use and Development Commitment. What we've been presented with this evening though is something almost as good and that's the private covenant. What's true about the Use and Development Commitment from the legal standpoint is that it may not be enforceable on the owner if the owner hasn't entered into it, hasn't agreed to be bound by it. So if, for instance, the project were, and I'm just talking about what could happen, if the project didn't get off the ground or you didn't exercise your option and this ground was zoned M-1, these commitments that are contained in the Use and Development would be of no consequence to the owner because they, I believe, it's Mrs. Loehrlein and I forgotten the other fellows name...Mr. Kissel, they would say we didn't sign that, we didn't agree to that. But what they have signed is the private covenant and so they are saying, at least by this private covenant, which they may legally enter into outside of the Use and Development, that we are binding ourselves to these terms which are almost exactly the same as the Use and Development. I'm just telling you when you get to going to record this ordinance and this Use and Development Commitment at some later date someone could complain the owners did not sign it. If that is the state of the facts.

Bob Woodward: The owners did not sign the first one. Upon

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suggestion of our attorney he redid it. We had the owners sign it. It obviously has been lost this evening, it will be provided to you in the morning. If it cannot be provided from our files in the morning, then we'll be glad to resign it and you are correct they have signed the private covenants.

Tim Born: You know we may be spending a lot of time for naught. Are they here this evening?

Bob Woodward: I do not believe they are. No, sir.

Tim Born: Okay, well I guess we aren't spending a lot of time for naught.

President Mourdock: So much for that answer.

Bob Woodward: Surely, if I can commit to you that I will donate you a million dollars, you can trust that we have those and will deliver them to you tomorrow morning.

Tim Born: Yeah, and no one is suggesting anything to the contrary is going to occur. I'm simply offering this Commission my legal advice based upon what's before us here.

President Mourdock: Commissioner Jerrel has a question.

Commissioner Jerrel: I don't really have it directed to you so it might be answered by anyone in the group. I have worn a different hat the last six years. It's the hat that has to find the money for things to happen. I was reading the highlights of the Burkhardt/Lynch Business Park Development and the money for Burkhardt Road will be from all real estate taxes from said area, Mr. Folz. So this development will not benefit the Knight Township taxpayers directly. Indirectly, after a number of years it will, but it will be used if we so choose to help with Burkhardt Road. Then under no substantial effect on traffic it says the Business Park will develop gradually and will have no substantial effect on traffic. Now some of that is incompatible because if we're going to have a TIF, it's Tax Incremental Financing, and you must capture your taxes from your new development. The new development must be assessed with enough value to generate those taxes to pay for that. Now, if that is, in fact, going to develop very slowly then we're not going to have the adequate funding to do a Burkhardt Road development from Tax Incremental Financing. Now that's neither good nor bad, I'm just saying that in order to do Burkhardt Road, which is very important in the overall scheme of things, we need a funding source probably elsewhere because the TIF is not going to generate that. We'll be fortunate to have enough TIF in the existing Burkhardt/Lloyd expansion to fund what we're going to do. We hope that...I know they all hope that happens sooner rather than later. The engineer, I spoke to him earlier, and he is going to have an estimate for the Commissioners based upon the cost that we're currently experiencing to plan for the long term financing of that project. I've been working on a number of possible sources, but I wanted to make that clear that this handout that relates...TIF will not generate enough funding to do all of that. I just wanted to make that point. I mean, I'm just interested in the expansion of Burkhardt. Thank you.

President Mourdock: Carolyn, do wish to react to that?

Carolyn McClintock: No.

President Mourdock: Or anyone else? How about you, Pat?

Commissioner Tuley: I really don't have anymore questions. I mean, just from what Mrs. Jerrel was saying it may not generate enough, but it will generate more than what we currently are getting. As you heard tonight, Lynch Road is going through and I think that's part of my concern. With or without this development, the traffic on North Burkhardt Road is going to be horrendous without widening Burkhardt. I don't know where we're going to come up with the money. I know you're looking at several sources--

Commissioner Jerrel: Yes, I am.

Commissioner Tuley: --and I agree probably that TIF isn't going to create in and of itself enough money to do it, but maybe we could add some money to it to finish it out. That's...it's not a point of argument, it's just a comment.

President Mourdock: Other questions? Other comments? Just to revisit, Tim, the issue. You're saying that the signed covenant that we have, as far as you're concerned, is enforceable through the chain of title? Is that an accurate comment?

Tim Born: The covenant is irrespective of the Use and Development Commitment because you can enter into covenants or agreements and be bound as long as you are a property owner. What this covenant does is bind Mr. Woodward, the petitioner of this particular rezoning, and the owners of the property, Judith Loehrlein and John Kissel, to the items set forth therein. Those items are almost, not word for word, but very similar if not identical to what was in the Use and Development. It doesn't replace the Use and Development. The Use and Development, as the record stands right now, indicates that it was signed by Mr. Woodward alone. What I would urge this Commission to consider doing is on its voting make a condition that they will not sign the ordinance, if should that be a positive vote for rezoning, not sign the ordinance until they have a signed copy of the Use and Development Commitment by the owners.

Rob Faulkner: My name is Rob Faulkner. I think Mr. Born makes an excellent point and that's an excellent idea as a way to resolve this dilemma. Again, I reiterate that we do have that and I apologize. This thing's been going on for a long time and over time things tend to get in a bit of disarray, but we do have that. I would also point out that, and Mr. Born might be able to expand on this too, generally it is not a practice to put a private covenant and chain of title on a rezoning. That's just an additional step that was taken to augment the commitments made in the Use and Development Commitment.

Tim Born: I won't speak to the frequency, but I've seen it done. What the statute says simply on Use and Developments is the county can require Use and Developments be entered into and



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the last section of that statute says and nothing in this section shall prevent parties from entering into legally enforceable and valid covenants. That's what the parties have done here tonight. I say the parties, I do not want to misspeak here. The only people whose signatures are on this private covenant of course are the petitioner and the owners. What they are agreeing to do is the things set forth herein and they're giving the right to the County Commissioners and to property owners within one mile to bring any legal action or equitable action to enforce the private covenant. The commitment...and I want to be sure the Commissioners are clear, and I think they are, the commitment that Mr. Woodward spoke of so generously this evening, the granting of that...or the donation of that land, although not specifically set forth herein, it is not specifically set forth in this commitment. I would also urge County Council or someone if it were a positive rezoning to get a legal enforceable agreement to that effect on the donation at some point in the near future, immediate future. I want you to understand he's not up here saying if you give me my rezoning I'll give you this ground. He's saying that in order to make this work, this development work, I want to give you this ground because it's going to positively impact everyone including everyone who lives in that area along Burkhardt Road. I just want you...I know you're clear about this, but be sure that this document doesn't say that, but he's promised that.

Carolyn McClintock: He can't say that.

Tim Born: I understand--

Carolyn McClintock: We cannot in writing do that.

Tim Born: At this point.

Carolyn McClintock: We do legally not good things for the Vanderburgh County Commission and we do not good things for Mr. Woodward. That's the only reason that is not in writing.

Commissioner Tuley: Spoken from experience.

Carolyn McClintock: That's about several attorneys, at an hourly rate, opinion. We've talked to three of them.

Tim Born: You're not getting any different advise from this counsel.

Carolyn McClintock: No.

Commissioner Tuley: Are we going to sit here the rest of the night and --?

President Mourdock: No, wait there is one question, excuse me. As a courtesy to Mr. Champion, he asked a question of Mr. Combs and I want to make sure that question is answered or a question to Mr. Woodward. If I can restate the question, I believe it was is the Combs acreage going to be on a corner lot adjacent to Burkhardt? Is that what you ask Mr. Burkhardt, or Mr. Champion?

Mayetta Champion: No, we have heard that he has a lease for a gas station at the corner of Burkhardt and (inaudible)

President Mourdock: Okay, then for the record the question is does Mr. Combs have a lease on some property at the corner of Burkhardt for a gas station?

Chris Combs: That is not true. There is no lease.

Thomas Champion: No, I know that, but are you planning on putting a gas station in there?

Chris Combs: There are no plans right now about putting any gas station there. Right now I'm planning on putting Combs Landscaping there because right now I'm parking cars on top of cars in my own company and I just need to move to get me a new place where I can expand my business. That's what we're planning on doing with the land.

President Mourdock: Okay, thank you. With that clarification, I will ask that we bring this to a vote ten minutes later than I originally hoped.

Commissioner Tuley: Mr. President then at this time I move that this Board approve VC12-96, petitioner Robert Woodward, Sr., address 7321 Eagle Crest Boulevard, request the property from Ag to M-1.

Commissioner Jerrel: I need to--

Commissioner Tuley: That was for the purpose of bringing it to a vote.

President Mourdock: Yes.

Commissioner Jerrel: I will second that for the purpose of bringing it to a vote.

President Mourdock: Okay, we have a motion to bring it to a vote and a second, so I will say so ordered for the vote purpose and have a roll call vote as with all ordinances. Commissioner Tuley?

Commissioner Tuley: Mr. President, I just need to say a couple of things. Number one, Lynch Road is going to come through, alright? Lynch Road is going to be built. We're going to need an interchange and at some point in time Burkhardt Road is going to be widened as well and we're going to need that ground. Right now it's being offered to us to be given to us. There are sewer and water lines being extended and if we're going to wait for this body of government or any other body of government to do all the infrastructure prior to development, I'll be long dead and gone before we have that kind of money to do it. That would be the ideal way to do it and I'd love to do it, but we're not going to be able to do it that way. As Mrs. Jerrel pointed out, probably the TIF won't create quite enough funds in and of itself to build and widen Burkhardt Road. We'll have to work and add some funds to that either from money that's been set aside for economic development, infrastructure improvements off

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the riverboat, we have CCD funds available to do that. I think it's important for us to develop and put up an open sign in this county as opposed to a closed sign. I do think that this does meet the four criteria that you set out and I'll vote yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Thank you. This has been very interesting and they told me everyone would be arguing and yelling and zonings are very contentious, but I'd like to compliment all of you. I thought the presentation has been excellent and I thought the remonstrators presented their case very well. Mr. Mitchell made a statement that probably sums up how I feel about logical growth, planned growth and, therefore, until we can fund Burkhardt Road I will vote no.

President Mourdock: I'd like to be excused!

Commissioner Tuley: You know how I felt last year.

President Mourdock: That's a very good point. Bettye Lou, quoted someone so I will, too. I'll quote Steve Roe "We are all affected by this decision, there are good people on both sides." This one is agony because there are good people on both sides and because every argument here tonight was largely valid. We have Catch-22 after Catch-22 in this decision. We can say, we want to improve Burkhardt Road, and we don't have the money to do it. We can say we don't have the infrastructure out there to support this kind of development and yet, unless we get deals such as this for the county development it won't occur. We can say we want to be more than a suitcase community and yet everyone wants development. Sorry. Everyone wants development to occur someplace else. As I look at the map, as I look at the development that's occurred in the area, as I look at the drainage patterns, I question whether or not this is the best possible use of this ground. Yet that same map show we do have four lanes of traffic surrounding this piece of property. I think it is inconceivable to imagine that for any extended period of time this property is going to remain anything other than a commercial zoning by some basis. If you think I'm playing this for drama folks you're wrong. I think, excuse me, no matter what we do with this Board with this vote we are sending a very big message. It is either we are pro-growth or we are going to slow everything down and try just to choke off growth that we have. I believe that while this is not by any stretch of the imagination the perfect plan, I question that the TIF will raise the money that we need to do Burkhardt. Certainly, it's somewhat disturbing to hear that 20 acres may go to a nursery, and that's not a slap at Mr. Combs' business, what that is a question as to whether nurseries can generate that type of increasing value we need in TIF. I think that's a decision that, as a developer, needs very much to be looked at. Having said that, however, Commissioner Tuley's point is a very good one that the traffic pattern as the result of the connection of Lynch Road that's real regardless of what we do here. We've got to do something with Lynch Road, we've got to build a basis to do it. With that I could vote as regretfully one way or the other, but I will regretfully, and that's an odd way to say it to be a pro-growth person, but I'll regretfully

vote yes. So the petition passes.

Tim Born: For the record the ordinance will be signed subsequent to the receipt of a signed Use and Development from the owners, is that right? Mr. Faulkner, will bring that to the Commissioner's office tomorrow.

Bob Woodward: If I may interrupt, sir? Before all the remonstrators leave, I would like to pledge to you and to them that while they haven't met with me, I am very open to meet with them to do every thing we can to lessen the impact and I hope that they will call me. My desire is for my company and Vanderburgh County to grow and for these folks not to suffer for it. They're leaving now, but I wanted to interrupt and make that offer. I thank you very much.

President Mourdock: Since you walked to the microphone to make that offer let me just add to it, Mr. Woodward. In two and a half years on this Board I've never gotten as many pro and negative calls. I will be honest with you, as a politician you give more weight to the negative calls. I mean it's just human nature. You will, as Mrs. McClintock said and as Mrs. Cunningham said, have to come before this Board in several ways yet. You will have to go for platting, you will have to come to the Drainage Board and the promise that you just made--

Bob Woodward: We have done four--

President Mourdock: Let me finish. The promise you just made we will hold you to it.

Bob Woodward: I encourage that. We've done four projects. I'm proud of the effect of every one on Vanderburgh County and I assure you this one won't be any different. I welcome being held to that, sir and I thank you for your consideration.

President Mourdock: Is there any other business to come before this Board this evening?

Commissioner Tuley: I don't think so.

President Mourdock: I would ask for a motion for adjournment.

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

Meeting was adjourned at 9:15

**Those in attendance:**

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Tim Born  
Barbara Cunningham  
Charlene Timmons  
Tony Greubel

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Marco DeLucio  
Carolyn McClintock  
Jim Morley  
Al Folz  
Bill Bartlett  
Mark Imil  
Jeff Norrington  
Lisa Kohl  
Robert Stallman  
Mitch Bunner  
Mayetta Champion  
Tina Kennedy  
Thomas Champion  
Rosa Lateulere  
Steve Rudolph  
Chris Combs  
Jack Rogers  
Bruce Mortenson  
Hope Roe  
Steve Roe  
Michael Hall  
Kirk Mitchell  
Rob Faulkner  
Bob Woodward  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Betty Lou Jerrel, Vice President

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Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Hearing  
March 17, 1997**

President Mourdock: We'll call to order the Vanderburgh County Commission Rezoning Hearing of March 17, 1997.

**Approval of minutes**

President Mourdock: We have from the previous meeting the approval of our minutes of February 18, 1997.

Commissioner Tuley: Move for approval.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC3-97 Petitioner: MJM Properties First reading**

President Mourdock: Where did my list go? Here it is. For our first reading tonight we have VC3-97, the petitioner MJM Properties and I would ask Barbara Cunningham to make any comments she may have.

Barbara Cunningham: No comments, Mr. President. You just refer that to the Area Plan Commission.

President Mourdock: For the record, she had no comments there, since they probably can't hear you on the--

Commissioner Tuley: First reading.

President Mourdock: For first reading then I would ask for approval.

Commissioner Tuley: Mr. President, I move at this time that VC3-97, petitioner MJM Properties, be approved on first reading and sent to Area Plan Commission for further recommendations.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC20-96 Petitioner: John Crabtree Final reading**

President Mourdock: For final readings this evening we have item VC20-96 and it is my understanding that the petitioner is asking that it be deferred for one month.

Carolyn McClintock: We would request that be deferred until May 19th.

President Mourdock: Okay, and what--

Barbara Cunningham: Is that the rezoning night?

Carolyn McClintock: Yeah, whatever the zoning night is in May.

That is the third Monday in May, the 19th, that's when we would like that deferred to.

President Mourdock: Okay, and those comments were from Carolyn McClintock representing the petitioner. I would ask for a motion then to defer until the zoning meeting during the month of May.

Commissioner Jerrel: I'll move deferral of VC20-96 to May 19th.

Commissioner Tuley: Second.

President Mourdock: So ordered. Is there any other business to come before us this evening?

Commissioner Jerrel: Motion to adjourn.

Commissioner Tuley: So moved.

President Mourdock: So ordered.

Commissioner Tuley: Second...whatever. We're out of here!

The meeting was adjourned at 7:04 p.m.

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
April 21, 1997**

The meeting began at 7:17 p.m. with President Richard E. Mourdock presiding.

President Mourdock: We'll reconvene our Commission to deal with some zoning issues. There is a meeting going on down the hall for the City Council, so if you are looking for them you're in the wrong place. We have before us tonight a number of first readings and three finals readings which probably will take most of our meeting time. Because our sound system is not the best, if you wish to speak to any of these issues you must, absolutely must, come to the microphone and identify yourself with your name and address. The important thing to realize is that this is a zoning meeting which deals with land use only. This is not about drainage issues, it is not about traffic control issues, it is solely about whether or not the proposed use of the particular piece of land fits with the zoning plan as approved in the Master Plan of Vanderburgh County.

**Approval of minutes**

President Mourdock: Having said that, the first item on our agenda is to approve the minutes of the rezoning hearing of March 17, 1997.

Commissioner Jerrel: I would like to move approval of the minutes of that meeting.

Commissioner Tuley: I'll second.

President Mourdock: So ordered. I just realized that my mike had been off all that time. I hope you got all that, Charlene.

**VC-4-97 Petitioner: Julie Baker/SCI Sign Concepts First reading**

President Mourdock: We have four items this evening for first reading. The first one is VC-4-97, Petitioner: Julie Baker/SCI Sign Concepts for 1930 Allens Lane. The request is to rezone from C-2 to C-4.

Commissioner Tuley: I'll move approval on the first reading and recommend forwarding to Area Plan Commission.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC-5-97 Petitioner: Durholz Family Trust First reading**

President Mourdock: Second we have VC-5-97, Petitioner: Durholz Family Trust at 3100, 3300 and 3400 North Burkhardt. The request is to change from AG to C-4 and M-1. Is there anyone here to speak on that particular issue? I thought that might be withdrawn, but seeing nothing--



Commissioner Tuley: Okay, I'll move approval on first reading and recommend that it be sent to the Area Plan Commission.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC-6-97 Petitioner: MIB Developers, Inc. First reading**

President Mourdock: Third we have VC-6-97, Petitioner: MIB Developers, Inc. for 3911 Oak Hill Road. The request is to take the zoning from R-1 to C-4.

Commissioner Tuley: I'll move approval on the first reading and forwarding to the Area Plan Commission.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC-7-97 Petitioner: MIB Developers, Inc. First reading**

President Mourdock: The last of our first readings is VC-7-97, Petitioner: MIB Developers, Inc. for 3919 Oak Hill Road. Requesting R-1 to R-3.

Commissioner Tuley: I'll move approval on first reading and forwarding to Area Plan Commission.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**VC-1-97 Petitioner Richard Broerman Final reading**

President Mourdock: We have our final readings and as we go through each of these we'll ask that the procedure, if you will, will be the same. We'll have Barbara Cunningham or Janet Davis with Area Plan give us a quick briefing on that and then anyone wishing to speak to the issue may do so. So, Barbara, the microphone is yours.

Barbara Cunningham: Do you want me to be sworn in?

President Mourdock: Sure. Joe, if you would do the honors there and for anyone else who would be addressing this issue.

Barbara Cunningham: Who will be speaking.

Joe Harrison, Jr.: Yeah, who will speaking on the first matter, I guess, is...

President Mourdock: VC-1-97, Petitioner: Richard Broerman and the address is 701 Eickhoff Road to go from AG to R-2.

Joe Harrison, Jr.: All those who will be speaking on this issue, please raise your right hands. Do you swear or affirm that the

testimony that you are about to give is true and accurate so help you God?

Group response: I do.

Barbara Cunningham: This is a petition to rezone a 13.55 acre site from Agricultural to R-2. Rick Broerman is the petitioner and representative. Pete Hillenbrand is the current owner, Andy Easley is the engineer. The property has been assigned an address of 701 Eickhoff Road for the purpose of rezoning. The rezoning petition was heard at the March 5, 1997 Area Plan Commission meeting and received a no action, three yes/three no. The petition was then amended by Mr. Broerman to include a Use and Development Commitment which limits the use of this site to single family dwellings only. The petition was heard again at the April 2, 1997 Area Plan Commission meeting. The vote on the ordinance as amended with the Use and Development Commitment was a recommendation for approval with seven yes, three no and one abstention. The proposed R-2 zoned 61 lot subdivision is located east of the extended Eickhoff Road and north of Chapel Hill Drive. The implementation of the proposed subdivision will require the northerly extension of Eickhoff Road. The subdivision plat known as Ashley Place Subdivision was also approved by the Area Plan Commission at their April 2nd meeting. The implementation of the new subdivision as submitted is dependent upon approval of the rezoning to R-2 as a couple of the lots are smaller than the minimum standard of the R-1 or Agricultural district. Single family development is a permitted use in the existing Agricultural zoning classification. The R-2 district allows single family and duplex residential development. However, the Use and Development Commitment that has been filed now says that there can be no duplex residential development in this subdivision. The R-2 district also allows smaller lots. It allows 60 foot of frontage in AG and R-1 and it is 50 foot of frontage if you zone to R-2. It allows greater lot coverage. There's 30% total lot coverage in AG and R-1 and 40% in R-2 and smaller lot sizes: 6,000 square foot minimum in R-1 and 5,000 square foot minimum in R-2. Although the Use and Development Commitment limits the use to single family, this rezoning will allow larger houses on the lots. The Comprehensive Plans projects this as an area of residential development. The rezoning to R-2, although not inconsistent with the Comprehensive Plan, will allow higher density residential development than the type of residential that exists in the surrounding area. If all the lots were 6000 instead of the two that are not 6,000, then single family could go in, but what would happen would be you would have a smaller house because you could only do 30% lot coverage and with this you can do 40%.

Commissioner Tuley: That's the reason for the request for R-1 versus R-2?

Barbara Cunningham: Is to go to, I believe, and you correct me if I'm wrong, is to go to a 40% lot coverage because most of the lots would fall under the regular subdivision lots.

President Mourdock: You asked to be corrected if that was wrong. Just to verify that my notes from the APC meeting said that same

thing. R-1 covers 30% and then R-2 allows 40%. Good memory.

Barbara Cunningham: That's it.

President Mourdock: Okay. Mr. Easley or Mr. Broerman.

Andy Easley: My name is Andy Easley. I am here on behalf of Rick Broerman. Rick Broerman is here. You have a plat of the subdivision.

Commissioner Jerrel: Yes.

Andy Easley: I have an extra one if Mr. Mourdock and Mr. Tuley want to have one.

Commissioner Jerrel: I don't have to share this.

Commissioner Tuley: You don't have to share?

Commissioner Jerrel: I mean, I can bring it down there. I went in to get it, so you could--

Commissioner Tuley: Okay.

Commissioner Jerrel: Well, you guys know more than I do.

Commissioner Tuley: Yeah!

Andy Easley: Ms. Cunningham told you about the 30%/40%. As a practical matter the average coverage...the footprint of the house will probably be in the neighborhood of 35% which does give us 5% more and we can have 300 square feet of a larger footprint. This will create slightly larger homes. It also gives the builder greater flexibility in the selection of an architectural plan.

Commissioner Jerrel: I have a question. All of these are laid out and only two of them are in the 5,000?

Andy Easley: That's correct.

Commissioner Jerrel: So in other words, these others are all going to stay 6,000 or more?

Andy Easley: Yes, that is correct.

Commissioner Jerrel: I just didn't want to read that wrong.

Andy Easley: The coordinate geometry, the CAD, in computing the subdivision we did come up with two lots there that are just a little bit below the 6,000. We're not trying to increase the density.

Commissioner Jerrel: You will not change the rest of the lots?

Andy Easley: No.

Commissioner Jerrel: They'll all remain--

Andy Easley: No, this subdivision is approved.

Barbara Cunningham: It is approved subject to the R-2 zoning because we can not record this with those two lots.

Andy Easley: We do. Otherwise we would have to revise it and drop one lot, I guess, to get one more 6,000 square foot lot. We think that this will create more expensive houses on the property. Anybody that is opposed to a more expensive house is a little unusual this day and age as a neighbor. Any other questions?

President Mourdock: Excuse me. If you would, Rick, identify yourself.

Rick Broerman: My name is Rick Broerman. I'm the developer. This is a set of drawings that show the type of houses that Jagoe is going to be building in this subdivision. He needs a little bit of leeway so he can build a bigger house than the 30% allows. We've had numerous discussions with him and if we stay at R-1 it limits him to 30% and he can't build some of the houses that he wants to build, therefore it is going to limit the houses he is going to build to a smaller house.

Unidentified from audience: Do we get to see that?

President Mourdock: Sure.

Commissioner Jerrel: Sure, come up. Here why don't you take this one where they are both circled.

Andy Easley: You don't want to see the plat do you?

Commissioner Jerrel: Well, they may want to see it.

President Mourdock: Any other questions for Mr. Easley or Mr. Broerman?

Commissioner Tuley: Not at this time.

President Mourdock: For those remonstrators who were sworn in on this issue, would you like to comment at this point? Excuse me, again, Rick. Our microphones are terrible. You need to be at the mike.

Rick Broerman: Doesn't it require a special type of zoning for patio homes?

Barbara Cunningham: If you are talking about zero lot line homes.

President Mourdock: Barbara, you need to turn your mike on.

Barbara Cunningham: If he is talking about zero lot line homes you need to have a planned unit development.

Rick Broerman: I thinks that's a concern.

President Mourdock: Again, our microphone is open at this point

for any remonstrator who was sworn in to discuss the issue.

Commissioner Jerrel: Did that answer the question that there would have to be?

Unidentified: These are all slab homes aren't they?

Andy Easley: No, (inaudible comments not made from mike).

President Mourdock: Sir, please identify yourself.

Jeff Vickers: My name is Jeff Vickers, 8400 Chapel Hill Drive. I am to the area just south of the land that is up for rezoning. All I've got to say is really I can't say anything about building houses. There's no problem with that, but when you are starting to mention like 5,000 square feet an acre, I mean, that's like an average of nine homes to an acres of land. I can't imagine that after you build the size of home you're talking about you include a...I noticed that one of them had...at least one had a two car garage. You figure a driveway, where's the room from house to house or back yard or front yard going to be? There is just not much room left. It just seems to me that in the past years that, at least in the city, for requiring green area for business. In the county it seems like it keeps going up on the amount of ground you need to build a single family house for sewers or other reasons like that. I just can't see that putting that many houses in that few of acres is going to be good for the area or surrounding homes such as mine. Part of the reason that I moved to where I am at now is I have young kids, or a young son and young daughter and I wanted to move out of the city to give them a little more room and a little more space and a little more safety from traffic. Now, where I am now I will be looking out my front door and seeing it all again. As far as traffic will go, Eickhoff is a dead-end. It will be a dead-end with this subdivision. There is no roads out of it other than Eickhoff. You start thinking about the amount of traffic that little road is going to take every day it is going to be a whole lot more chance for accidents or anything else there. I say it's a dead-end, there is no other way out. The reason I say that is the only road to the north of that is like Upper Mount Vernon Road, but that is like approximately a mile away. One other point that I can think of now is one of these days we're going to have the Eickhoff Road extension that takes USI to 64. I'm not sure what kind of impact that would have on that because I know it is not going to use the existing Eickhoff Road, but somewhere a little west of there. I don't think it would be a good...what should I say? A front door for the community to see all these houses all bunched in one little spot. All my other neighbors, like you know, we all have plenty of...a lot more room. That's why I hope you'll deny it.

President Mourdock: Okay, thank you, Mr. Vickers.

Jeff Vickers: Thank you for your time.

President Mourdock: Sure, and just for the record, again, you said you live south of the property. Do you live directly off Eickhoff?

Jeff Vickers: I live on Chapel Hill Dr, 8400.

President Mourdock: Okay.

Jeff Vickers: It would be...well, like I said, literally out my front door.

President Mourdock: Okay.

Jeff Vickers: Thank you.

President Mourdock: Anyone else wishing to speak to this request?

Terry Chronert: My name is Terry Chronert. I'm listed on your blue print there touching adjacent to the plan. I have lived at 8511 Chapel Hill Drive for 20 years. I lived out there with the intention to be away from the main flow of traffic in the cities. I see that the future equity valuation of our property is going to just decrease once this thing gets in place and I'll tell you why. When we start putting our houses on the plan on .14 of an acre versus what we have in the surrounding areas on anywhere from an acre and a half to ten acres there is no continuity whatsoever with this plan to the surrounding adjacent communities. It's not right. It's unethical. It's inappropriate. It should be unacceptable. I think we can't talk drainage here, but that's a major issue that will be taken up in the future here. That is a major concern. There is a detention pond there that is touching adjacent to my property there and all I can see in the future is that it is going to be nothing more than a mosquito infested malaria pit. All I can see this proposition doing to us is drive nothing more than the greed that is behind it. That's wrong. It's inappropriate. It's unacceptable and it shouldn't be allowed. Thanks a lot for your time.

President Mourdock: Okay, thank you. Anyone else to speak to the issue? Mr. Easley?

Andy Easley: The first gentleman made the statement that nine houses per acre. That is entirely wrong. If you take 13.55 times 4 ½ houses per acre you get about 61 houses. I don't know how he was doing his math, but maybe the calculator was low on juice. It is only 4 ½ houses per acre.

President Mourdock: Excuse me, let me just clarify that. Are you doing your math including all the acreage which is the streets, the entire development?

Andy Easley: Well, as a gross if you take--

President Mourdock: Okay, I just wanted to be sure I understood.

Andy Easley: Yeah, that's what I'm doing. Barbara Cunningham corrected me. We do need to have this zoning approved because she said the plat was approved, you know, conditional upon getting the R-2 zoning.

Barbara Cunningham: May I correct that? Barbara didn't say we do need to have this zoning approved! Barbara said that if the

zoning were not approved you would have to start over with the plat.

Andy Easley: Yes, well you pointed out.

Barbara Cunningham: Yeah.

Andy Easley: You pointed out the Plan Commission. We do need the R-2 zoning otherwise we have to start over again and we would only...it's a shame to have to go back through everything for the sake of one and lose one lot and still build the number of houses assuming it would be approved. We request that you...this will create a housing that is needed on the west side. There is a good market out there and these people will be good neighbors to the people who already live there. That's about all I can say.

President Mourdock: Okay, thank you. Go ahead, Mr. Vickers.

Jeff Vickers: Mr. Easley is an engineer, he knows how many square feet is in an acre. What is there, approximately 449--

President Mourdock: It's 43,560 real roughly.

Jeff Vickers: Okay, 43,560. If you divide 43,560 I was just rounding up to approximately 45 and divided five by 45 which I still came up with nine unless somebody does math a different way. It's approximately right.

President Mourdock: Okay, thank you. Ma'am did you...someone said something about asking a question? Okay, you need to identify yourself please. Were you sworn in when we did the thing? Joe, if you would please.

Joe Harrison, Jr.: Do you swear or affirm that the testimony that you are about to give is true and accurate so help you God?

Joyce Waters: Yes. My name is Joyce Waters and I currently live on Washington Avenue, but I own 14 acres at the corner of Hogue and Eickhoff which is maybe a block from that area, a block and a half distance. My question is we hear different things and I just want to make sure in my own mind and the minds of the remonstrators here, because we have quite a group and I think we differ sometimes in what we hear, has the subdivision at this point been approved to go in and are we just arguing the size of the lots at this point? Do you have authority to cancel the subdivision?

Barbara Cunningham: They don't have...no. It's two different things. The subdivision was approved with the condition that they get the R-2 because the two lots that are too small cannot be approved by Plan Commission, so it was approved with the condition that they get the zoning of R-2 before it can be recorded. Now, they can come back and get rid of one lot and present it to Plan Commission and it probably will not come back to this Board again. It would go to Plan Commission and they could come back with one lot and take it through the approval process again.

Joyce Waters: So it is approved for the subdivision either way?

Barbara Cunningham: It's approved with the condition that they have to have the zoning or they have to come back.

Joyce Water: Is there anything...I mean, do you guys have any authority--

Commissioner Jerrel: To say don't do it?

Joyce Water: --to don't do it.

Commissioner Jerrel: I don't think so. I want to ask the Barbara the question though. If what we're talking about tonight is either if we don't approve it they can take out one and make one lot of two 5,000 square foot lots and they're meeting the R-1--

Barbara Cunningham: That's correct.

Commissioner Jerrel: I mean, they've met it, so that's it. If we say R-2 then they can keep those two lots, but it doesn't change that so if we vote no it goes--

Barbara Cunningham: If you say R-2 it allows a bigger house on that same lot--

Commissioner Jerrel: Yeah.

Barbara Cunningham: --is what we are saying.

President Mourdock: So there is really two issues. One being the two lots that are less than 6,000 square feet and the other being the footprint of the house which is to go 40% of the lot if it is R-2 and only 30% if it's R-1.

Barbara Cunningham: That's right.

Joyce Waters: Well, I think just to explain a little bit, I think some of the neighbors just are against the real small lots not necessarily that they want a huge house sitting on a tiny lot. From what I saw in the drawings there were some, unless I misread them, they were like .14 acre per lot. That is more than four houses per acre. Anyway, I just want to mention...that's one of the points that the neighbors are against is that the tiny lots just do not compare with the other areas. If it is not in your control to change that I apologize. That is truly one of the things--

Commissioner Jerrel: If I vote no, then they have to do something about those two lots.

Barbara Cunningham: They have to come back and probably take a lot out, but if they put it through with the 6,000 square foot it would meet the requirements of the Subdivision Ordinance.

Commissioner Tuley: It would still go through.

Barbara Cunningham: It probably would. They could always say



no, but they would probably lose that in court.

Joyce Waters: Okay, thanks.

Andy Easley: Sixteen of those lots are 10,000 square foot lots, 60 x 175 the ones that are adjacent to the SIGECO easement.

Kimber Heddens: I'm on the east side of the plat there, 8121 Chapel Hill. These lots are from .14 acres to one quarter of an acre. Every house that is adjoining this property has in the neighborhood of an acre and a half up to ten acres. Everybody that is an adjoining property owner lives out there because they wanted room, they wanted space and they wanted a yard. This subdivision plat is not compatible with the area. It is a total reversal of the area. There is not one property owner that adjoins it that is in favor of it. Every single adjoining property owner is against it. They're against it because of the size of lots and what it will do to the value. The second thing I know you said not to talk about drainage.

President Mourdock: That's right. This Board meets at another time to deal with drainage issues. We meet at that time as...the same three people meet as the Drainage Board.

Kimber Heddens: Okay, drainage has been from both sides and I want to just say one quick thing.

President Mourdock: Make it very brief.

Kimber Heddens: It will change that blueprint drastically. That's a fact, don't forget it.

President Mourdock: Okay. Thank you for the comment and for being brief, too. I appreciate it.

Barbara Cunningham: Commissioner Mourdock, the only thing I want to say is that the Subdivision Ordinance states that if you have a sewer you can have a 6,000 square foot lot. If you do not have a sewer, and that might be a possibility of some of the surrounding acreage, you have to have now a minimum of 2 ½ acres per land that is not sewer. So maybe some of the ones that are not on sewer that are one and a fourth or preexisting of the Subdivision Ordinance that went into...of the one that went into effect in '82.

Kimber Heddens: The major of property around it is much larger. It's four and five times the size of this and that isn't going to help the value of property.

President Mourdock: Okay, thank you.

Unidentified: Is she talking about storm sewers?

Barbara Cunningham: Sanitary.

President Mourdock: Sanitary, yeah. Okay, we've heard the issues on this and, again, we're dealing with an ordinance here so this will be done by roll call vote. First we need a motion for approval in the positive to vote.

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Commissioner Tuley: Mr. President, I'll move at this time then for the approval of VC-1-97.

Commissioner Jerrel: Second.

President Mourdock: Okay, we have a motion and a second, so we'll have a roll call vote. Commissioner Tuley?

Commissioner Tuley: I've been looking on the west side for three months for a house. There's not a lot of houses on the west side that are either...they seem to be either very inexpensive or very expensive. This would meet a need, however, I have a problem with this particular location given the surrounding properties and the narrowness of the roads. I'm going to vote no.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: No.

President Mourdock: I'm sorry, I don't think you were heard over the applause.

Commissioner Jerrel: No.

President Mourdock: For the record, I'll vote yes, but it is denied by a vote of two to one.

Commissioner Jerrel: A question. The next step for any of this comes back to the Area Plan?

Barbara Cunningham: They will have to refile a subdivision and it will come back before as a subdivision, but it doesn't have to be in a zoning classification. It's AG now and you can build single family in AG, so it can come back as an AG zoning. So it would not have to get rezoned.

President Mourdock: Right.

Barbara Cunningham: You all would be notified again. It would go through the same process.

Jeff Vicker: I never get notified. Is that because I do not own property--

Barbara Cunningham: Adjacent? Yes. Everybody will let you know.

President Mourdock: Excuse me. That brings up a very good point. Is there a mechanism, Barbara, when someone is not legally adjacent to a zoned property, but if they wish to be notified can they turn something in to you and be on that list?

Barbara Cunningham: I would say yes and I would like to do that, but with all the ones that we do it would be really difficult. You've got a network there, just let him know.

President Mourdock: Okay. Alright, thank you.

**VC-2-97 Petitioner: Mildred Heerdink Final reading**

President Mourdock: The next petition that we have this evening is VC-2-97. The petitioner is Mildred Heerdink. The address is 410 North Burkhardt Road and the request is AG to C-2.

Barbara Cunningham: Jeff Lantz is the representative for Mildred Heerdink and this request to rezone her home and her .89 acre plus 151 feet x 258 feet deep lot at 410 North Burkhardt from Agricultural to C-2. This petition was heard at the April 2, 1997 Area Plan Commission meeting and received no recommendation. A no action vote with three yes, six no and two abstentions. The stated proposed use on the petition is unknown at this time. The residence is located on the west side of Burkhardt Road two lots south of Virginia Street. Burkhardt Road is a rapidly developing commercial strip. Although the Comprehensive Plan projects the Burkhardt Road corridor between Morgan and Lloyd as an area of commercial development, the transportation section of the Comprehensive Plan contains a policy supporting the development of frontage roads to serve developments along major arterioles. The need and requirement for a frontage road are addressed in the EUTS Access Standard Manual. The Comprehensive Plan also calls for limiting the number and consolidating curb cuts whenever possible to facilitate safe and efficient traffic flow. The change in zoning is to allow development of the site as a speculative commercial use. There are serious concerns about access to this site. The site is one of three agriculturally zoned residential lots located just north of K-mart and south of Virginia Street. Commercial development of each of these lots without an overall plan for access creates the potential for three commercial driveways within a short distance which would increase congestion and vehicle conflicts and inhibit traffic flow. This rezoning is for the middle residence. There is one house to the north and one house to the south. I might be wrong on that. There might be two to the north or is that right? One to the north and two to the south?

Unidentified: No, there are just three.

Barbara Cunningham: I was right. Unless information is submitted showing how safe access to this site can be provided, this petition is not consistent with the Comprehensive Plan's goals, objectives and policies in the transportation action plan. The site has 150 foot of frontage on Burkhardt which is a collector carrying approximately 16,000 vehicles at this time per day. Alternative access such as a frontage road should be required. The county is currently widening the portion of Burkhardt Road from Virginia to Lloyd Expressway to four lanes. County Engineer, John Stoll, comments, "Many of the land uses allowed with a C-2 zoning can generate a substantial amount of traffic. Since this site is located on a rapidly developing road, increases in traffic could cause safety problems and additional congestion. Since the petition does not address the potential traffic problems it should be continued to a future meeting." I think he said this in the March meeting. "This would allow the developer additional time to address the access to this site and how to mitigate any traffic problems that would be created by the rezoning and development of the site." This

is John Stoll still. "This is necessary in order to prevent an excessive number of commercial driveways from being constructed on Burkhardt Road. Continued commercial development along Burkhardt Road could necessitate the construction of a raised median in front of this and other sites as a safety measure to prevent left turn accidents." The EUTS comments also recommend that the rezoning request be continued until the traffic impact on Burkhardt and the corresponding safety concerns are addressed. EUTS points out that other developers frequently coordinate access design and site development with adjacent property owners and establish written commitments to close access on the main roadway when the alternative access is provided. There are many C-2 uses which have the potential of creating heavy traffic volumes. The installation of another curb cut onto Burkhardt Road with the potential of numerous additional cuts as small individual lots develop creates a serious traffic hazard impeding traffic flow on this very busy commercial street. Piecemeal development along major arterioles in a word, is bad planning. It is discouraged.

Joe Harrison, Jr.: All those wishing to address this particular matter, please raise their right hands. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Jeffrey Lantz: I do. My name is Jeffrey Lantz, I represent Mildred Heerdink. Ms. Heerdink is not here. Her son is here. He does not have any interest in the property. Ms. Heerdink has contacted me to rezone this piece of property. As was pointed out in part of the discussion that Barbara indicated to you, the Comprehensive Plan projects the Burkhardt corridor between Morgan and Lloyd is an area for commercial development. This particular plan also allows for the development of commercial use along this property. This particular piece of property, as was pointed out by Mr. Mourdock, we're here tonight for land use and the highest and best use of this particular property is a rezoning to a commercial rezoning. As was pointed out by Ms. Cunningham, the property surrounding this particular property is agricultural. There is a residence to the north, a residence to the south, C-4 below it...the K-mart and across the street it is all commercial. North of Virginia Avenue it is commercial, it's C-4. There's C-2, CO-2 all along the Burkhardt strip. Now, therefore the highest and best use of this particular property is that it can no longer be the residential, single family dwelling. The highest and best use of this, the reasonable use of this particular property for its economic best use, is to rezone this property as a commercial piece of property. We have not sought to rezone this property for C-4. We have sought to have a rezoning for C-2 as opposed to C-4. It's interesting to note that it would appear, as I heard in the Area Plan Commission and as I heard Ms. Cunningham point out in her report here, obviously, she does not have the recommendation EUTS made in that it shouldn't be rezoned and the purpose of it is that there should be some kind of frontage foot or frontage road put on this particular piece of property or all the particular pieces of property. To do that it calls for a condemnation of property and my clients...my client's property would have to be...there would have to be a taking and she would have to be paid for that. She has .89 acres here. It's 151 feet x 258

feet. There is great discussion about how much property...or how much traffic is going to be generated by this one particular piece of property. She has an access to Burkhardt Road now. It talks about numerous curb cuts and etc. That would all be controlled by the Site Review Committee. Also, you...at least what I have been reading in the papers, you are contemplating expanding and widening Burkhardt Road across the street and therefore I contend that the highest and best use for this particular piece of property is the C-2 rezoning that we seek.

President Mourdock: Questions for Mr. Lantz?

Commissioner Jerrel: I just have kind of a comment. Again, I'm new so I have a lot to learn, but as I recall Green River Road was in much this same situation when the widening occurred and most of the curb cuts came because of zoning rather than planning. If we don't approve this tonight, then the plan will have to be developed on how many curb cuts we're going to have for that stretch between Virginia and Morgan. If we approve it then we are committing ourselves to curb cuts on every residential area which would be three or four curb cuts right in a row.

Jeffrey Lantz: I can't speak for the other property owners. Ms. Heerdink decided that she wanted to rezone this piece of property. I don't know...there are two residence beside us and I don't know what they're going to do. I'm not...it was implied at the Area Plan Commission, it was implied here tonight by Ms. Cunningham that what we should do is we should have gotten together and developed...and Ms. Cunningham is just quoting what the report shows. It implies that we should have gotten together in development. Some of the properties being sold by some commercial realtors, some is being sold by themselves. If you go up north of Virginia there must be five...at least five or six different signs up further north of that. I think to vote it down on the fact that my client should go set up some development and she's an elderly--

Commissioner Jerrel: I think the whole area should be--

Jeffrey Lantz: Well, that may be, but I am only coming before you seeking to rezone my client.

Commissioner Jerrel: Right.

Jeffrey Lantz: Again, I contend for the record that this is the highest and best use for this particular piece of property.

President Mourdock: Any questions, Pat? Anyone else here wishing to address this particular request?

Jeffrey Lantz: There were no remonstrators at the Area Plan Commission either.

President Mourdock: Okay, thank you. I would request, since there is no one else to discuss this issue, I would request a motion.

Commissioner Tuley: Mr. President, I move then the approval of

VC-2-97 from AG to C-2, Petitioner: Mildred Heerdink.

Commissioner Jerrel: Second.

President Mourdock: With our roll call procedure, Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Ms. Jerrel?

Commissioner Jerrel: No.

President Mourdock: I will vote no because of the curb cut issue.

**VC-3-97 Petitioner: MJM Properties, Inc. Final reading**

President Mourdock: Our last final reading, final final reading if you will, for the evening is VC-3-97. The Petitioner: MJM Properties. It's at 6201 Old Boonville Highway. The requested change is from the present AG zoning to M-2. Janet is now on the spot.

Janet Davis: Mark Fine is the representative for MJM Properties-

Joe Harrison, Jr.: Can I...hang on a second, I'm sorry. Why don't I swear you in since you weren't here originally. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Janet Davis: I do.

Joe Harrison, Jr.: Mr. Fine, the same thing or anyone else here on your behalf.

President Mourdock: Yeah, if you'll be speaking to the issue.

Joe Harrison, Jr.: Are you going to be speaking on this issue?

President Mourdock: Okay.

Joe Harrison, Jr.: Please raise your hands also. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Mark Fine: I do.

Janet Davis: Mark Fine is the representative for MJM Properties, Inc. in this petition to rezone 6201 Old Boonville Highway from Agricultural to M-2. This is an 8.1 acre site located on the south side of Old Boonville just west of Burkhardt Road. The stated proposed use is for an industrial park or other warehousing distribution or industrial purposes. This petition was heard at the April 2, 1997 Area Plan Commission meeting and was recommended for approval with 11 affirmative votes and zero

no votes. This eight plus acre site is located on the south side of Old Boonville Highway just west of Burkhardt. Old Boonville is a narrow road highly utilized by commercial and truck traffic due to the existing industrial and commercial zonings and uses. Green River Road has limited access at Old Boonville with right turn only onto Green River Road from Old Boonville. This restricted access at Green River will route much of the traffic to the Burkhardt corridor. Information on the rezoning petition indicates the possibility of an industrial park on the site. If developed as more than one business or industry, curb cuts and access should be designed to utilize one shared access point for the entire development and no additional individual curb cuts should be permitted. This area is identified on the Future Land Use Year 2015 map of the 1996 Comprehensive Plan as an area of industrial development. This proposed change in zoning is consistent with the plan. Quality site design including adequate buffers and green areas should be maintained to lessen the impact on the remaining residential in the surrounding area. This vacant agricultural site is within a rapidly developing area. If the site is divided into two or more lots, a subdivision plat will be required. Compliance with all code requirements will be addressed by Site Review at the time of submission of plans for the development of the site.

President Mourdock: Mr. Fine.

Mark Fine: My name is Mark Fine. I am here on behalf of MJM Properties which is the owner of this parcel of ground. Again, to highlight a few of the prior comments, this property is currently zoned Agricultural and we are requesting that it be rezoned to M-2. There is M-1, M-2 and M-3 in this general vicinity and adjacent. We are anticipating at this time either a warehousing distribution or general industrial purpose with the absolute need or utilization not yet known. In support of our petitioner, I would like to call your attention the owner of this corporation is Mark Miller, Mark J. Miller, and just west and north of this property is Miller Truck Equipment which is a neighbor in this area. In support of our desire to rezone this property I can only call your attention to the general caliber of the facility that he currently operates. I can only say that any development that he might do there would be consistent with the type of development that he has already exhibited with his existing facility. I'll be brief and pause there. I have with me tonight, Mark Miller, the owner of the corporation. If I can answer any questions?

President Mourdock: Questions for Mr. Fine?

Commissioner Jerrel: I don't have any.

Jean Henderson: Good evening. My name is Jean Henderson. I live directly across the street, with my husband and our children, from this development site at 6204 Old Boonville Highway. This is our first home and we are very new to all of this. Really, our concern is that...we have no opposition to the development. We're concerned, though, in being trapped between the subdivision behind our home. We have one of the first farm homes there. In this new development what will become of our property? We do have frontage onto Old Boonville

Highway. I don't know if this is the appropriate time to bring up this issue or not, about simply being locked in between. We would hope that one day we also go to commercial. We have no problem with this. The only other thing is as long as they don't put their light right into our front door.

President Mourdock: A reasonable request there.

Jean Henderson: Is this the right time to...I mean, is there anything that we should be addressing at this time as to the consequences to our property as being...I'm concerned that when we need to convert our neighbors, since we are the buffer, that they may put opposition up. With no experience, anything that you might be able to tell us at this point we would appreciate that. Thank you.

President Mourdock: You're entering into the process, I guess, in a good healthy way here. You get to learn a little bit going across the street watching what happens there if, in fact, you're planning on doing commercial yourself one day. I guess just since you did bring the issue up, I would ask Mr. Fine, and this may be premature given the somewhat unknown nature of what the development might be, but her comment regarding lights. Has there been any thoughts or any discussion between the parties on that one?

Mark Fine: As you said, it's a little premature for us to say where the lights will be or even if there will be lights at this juncture, but we will certainly be a good neighbor.

President Mourdock: Okay, you're on the record saying you'll be a good neighbor!

Commissioner Jerrel: You'll keep them informed?

President Mourdock: Sir, did you...? Any other comments? Questions of the Commission? I would look for a motion.

Commissioner Tuley: Mr. President, I move then the approval of VC-3-97, MJM Properties, Inc. from Agriculture to M-2.

Commissioner Jerrel: Second.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes, so the petition is approved.

Mark Fine: Thank you.

President Mourdock: Any other business to come before our Board this evening?

Commissioner Tuley: Nope.



Commissioner Jerrel: I'll move a motion to adjourn.

Commissioner Tuley: Second.

President Mourdock: So ordered.

The meeting was adjourned at 8:05 p.m.

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***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison  
Charlene Timmons  
Barbara Cunningham  
Janet Davis  
Andy Easley  
Richard Broerman  
Jeff Vickers  
Terry Chronert  
Joyce Waters  
Kimber Heddens  
Jeffrey Lantz  
Mark Fine  
Jean Henderson  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

---

Patrick Tuley, Member

Recorded and transcribed by Charlene Timmons

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
May 19, 1997**

**Opening of meeting and introductions**

President Mourdock: While we appreciate your patience while we worked through our regular Commissioner schedule we will begin to get the rezonings this evening. By way of introduction to the rules, if you will, obviously there is a number of people here tonight and if past practice holds many if not most of the people here will wish to address the Commission on a given hearing that we will be having or a given item. If you do so, because all of our notes were taken verbatim, we would ask that you come to the microphone and state your name and address for the Commissioners. Also, because there are so many of you here, and this is very important, but because there are so many of you here we would ask you to limit your comments to no more than three minutes. If I bang the gavel it is after three minutes and the other part of that is that we realize that a number of you may be here on one specific item. We do not need...we may only be lowly elected officials, but we do not need to hear five times that the drainage is a problem or the access is a problem. Just try to work together. If one of you wishes to talk about one of those items, please let someone else talk about the others and bring them to our attention. Having said that, there are agendas at the table. At the table here we have Barbara Cunningham, with the Area Planning Commission; to her left is County Attorney Joe Harrison, Jr.; Commissioner Pat Tuley to my immediate right; Bettye Lou Jerrel to my immediate left; and our Recording Secretary, Charlene Timmons. One last point, too, about speaking to the Commission. Ms. Cunningham will go over the status, the staff report, of each item that we'll be discussing and those who wish to address the Commission either for or against any given item we would ask you to be sworn in because the testimony you are giving we want you to understand is very important therefore we ask that you (inaudible).

**Approval of minutes**

President Mourdock: Having said all that, our first item on the agenda is to approve the minutes that we have in our packet, I believe.

Commissioner Jerrel: We do. I move approval of the minutes of the previous meeting.

Commissioner Tuley: Second.

President Mourdock: I will so order and those are the minutes of the meeting of April 21, 1997. First readings tonight we have none coming before the Commission which means next month will be a slow month for this meeting.

**VC4-97      Julie Baker/SCI Concepts      Final reading**

President Mourdock: On our final readings tonight we have four and the first of those is VC4-97, Julie...I have it Backer on my

computer, but I believe it is Baker.

Commissioner Tuley: Baker.

President Mourdock: Okay, Julie Baker with SCI Concepts, 1930 Allens Lane and that is a request to change zoning from C-2 to C-4. Will those representing Ms. Baker or remonstrators please be sworn.

Joe Harrison, Jr.: Please raise your hand, anyone here for that particular petition. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Respondents: We do.

Joe Harrison, Jr.: Thank you.

Barbara Cunningham: Tom Bodkin is the representative for Julia Baker and Mike Siebeking of SCI Sign Concepts, Inc. in this petition to rezone 1930 Allens Lane from C-2 to C-4. Mr. Bodkin and Mr. Siebeking have met with the adjoining neighbors and Mr. Siebeking, who is purchasing this site, has entered into a private agreement with the neighbors which has resulted in, at least in the Area Plan Commission meeting, the neighbors supporting this request. Mr. Gray, the property owner adjacent east of the site, appeared at Area Plan Commission as spokesman for the neighbors and voiced his support of the rezoning because of the private agreement which was made with the neighbors and everyone understands that the Area Plan Commission does not enforce private agreements. The Area Plan Commission recommended approval of this rezoning by a nine to zero vote. The site was rezoned to C-2 in 1995 and a commercial building for a auto parts store was constructed on this site. This step up in commercial zoning to C-4, although not inconsistent with the established commercial use of the site, allows many uses incompatible with adjacent residential development. I believe the private agreement which has been negotiated with the neighbors addresses the neighbor's concerns about the property. However, I will again say that a private agreement is just that, private and not enforceable by the Plan Commission or by the County Commissioners. This is a one and a half acre site located on the south side of Allens Lane between Myrtle and Eleventh Avenue. The applicants were notified by Area Plan Commission staff that the time and application for sign permits for their new business that the use as a sign shop requires a C-4 zoning classification. This site would need to be rezoned to bring the new use into compliance with code requirements prior to issuance of any permits. The parking lot must be paved as required by code and as required as a condition of the initial permit for construction and establishment of commercial use of the site. Mr. Siebeking states that he is in agreement with that.

Tom Bodkin: Tom Bodkin, 700 Hulman Building here in Evansville. I am counsel for the petitioner. I think I am perhaps the only other one who was sworn which is kind of a unique position for me to be in in front of this Board. As Ms. Cunningham indicated the Area Plan Commission has recommended approval which is always comforting when you are representing a petitioner. In

front of me here is a board, I guess for lack of a better word, that kind of shows the area. The parcel at issue is the parcel in, from your perspective, the lower left-hand corner marked C-2. The area immediately around it is AG. Across the street is M-1 zoned real estate. We have the Evansville Waterworks property. We have a construction company back up this way a bit. We do have C-4 and C-1 on the same side of Allens Lane as this parcel. As Ms. Cunningham indicated, the parcel is currently zoned C-2. The request is to take it to C-4 so that Mr. Siebeking can run a sign shop and that is a C-4 requirement. The immediate next door neighbor, Mr. Gray, was at the Plan Commission meeting. We have entered into a private agreement with the neighbors and it has been recorded. For the record it was recorded in Miscellaneous Drawer 5, Card 1476. There was also an earlier private agreement when it went to C-2 that still is in effect. I believe that we have satisfied the neighbors' concerns with regards to the use of this parcel. They didn't want it used as a liquor store, a topic of which I have had some familiarity in the past, and that private covenant restricts the use of the parcel. My client would request that the County Commissioners vote yes on the ordinance. I have sent around some photographs for you to look at. One of the commitments that was made earlier when the parcel went to C-2 was that a privacy fence be built between the next door neighbor, Mr. Gray, and the parcel. This is the fence. The fence now goes all the way to the back of the property line because there is a lady who runs a babysitting service somewhere in the neighborhood and everybody was concerned about her kids getting up in our parking lot, so we've run it all the way down. This fence will be taken to eight feet if the property is zoned C-4. We cannot take it to eight feet now under a C-2 zoning, so it will go up a little bit higher. That absolutely blocks the view from the adjoining neighbor to the side that is not in the swamp. Over here, that's all floodplain on the other side around, so there is not anyone on that side. The parcel again is...we've begun the paving. The entry way has been concreted and that, of course, will continue. I don't know what more to tell you. Again, in my experience I don't think I've ever had anyone stand up who has R zoned property next to C-2 and say, great job, go to C-4 with it, but we had that and I think that's perhaps helpful to you to know that the neighbors believe that this is going to be a good use for that one acre plus piece of real estate. If you have any questions I would be glad to try and answer them for you.

President Mourdock: Okay. Any questions?

Tom Bodkin: Thank you.

President Mourdock: Last chance. Anyone here to speak on this particular petition? In that case, I would ask for a motion.

Commissioner Jerrel: I would move approval of the county rezoning of 97-23-PC/VC4-97, 1930 Allens Lane, from C-2 to C-4.

Commissioner Tuley: Second.

President Mourdock: Because this is an ordinance, we'll have a roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes so the zoning is approved.

<b>VC6-97</b>	<b>MIB Developers, Inc.</b>	<b>Final reading</b>
<b>VC7-97</b>	<b>MIB Developers, Inc.</b>	<b>Final reading</b>

President Mourdock: The next item on our agenda this evening is VC6-97. The petitioner is MIB Developers and that address is 3911 Oak Hill Road. They request a rezoning from R-1 to C-4. I think, unless our County Attorney has any suggestions otherwise that we hear these two together although it would require two votes, of course. VC7-97 has the same petitioner for the same address and that request is from R-1 to R-3.

Joe Harrison, Jr.: That's fine and I'll swear them in.

President Mourdock: First I would ask for a motion procedurally that we hear these two items together.

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: Okay, so ordered. With that, then, I would ask anyone who would be speaking to either VC6-97 or VC7-97 to please raise your right hand to be sworn.

Joe Harrison, Jr.: Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Respondents: We do.

President Mourdock: Okay, just to clarify one thing I misstated, the second one the address is actually 3913 Oak Hill Road although it is VC7-97 as stated.

Barbara Cunningham: Jim Morley is the representative for owner and developer, MIB Developers, Inc. and Alfred Bauer, Sr., in these requests for rezoning. As Mr. Mourdock stated, there are two separate petitions and each will require separate votes. My comments include both projects. For the purpose of the rezoning petition the proposed seven point plus acre C-4 site was assigned an address of 3911 Oak Hill Road and the proposed 25 plus acre site was assigned an address of 3913 Oak Hill Road. MIB Developers have filed these two companion rezonings which seeks to rezone 7.09 acres from R-1 to C-4 for the seven lot commercial subdivision, MIB Subdivision, at the Lynch and Oak Hill intersection and a petition to rezone 25.29 acres adjacent east of that site from R-1 to R-3 for an apartment complex. These petitions were heard at the May 7th Area Plan Commission meeting and both petitions received a no recommendation or no action vote with four yes votes, four no votes and one abstention. Just as a point of information, and Mr. Mourdock

will concur with me, the subdivision vote was also a no action vote which was four yes and five no and it will be returning to the Area Plan Commission next month for rehearing. The Future Land Use 2015 Map of the 1996 Comp Plan projects an area of commercial development at the Lynch Road/Oak Hill Road intersection. The commercial development proposed by MIB Developers appears to be consistent with the overall plans for the area. However, the zoning classification requested for this site is C-4 and the C-4 classification allows many uses which may be considered incompatible or inappropriate adjacent to residential development. Any commercial use adjacent to residential should incorporate quality site design and adequate buffers. The Comprehensive Plan encourages buffers larger than those required by code. East of this commercial node, the plan recommends agricultural use due to the low elevation of the land. The majority of the parcel requested to be rezoned to R-3 is located within the area designated for agricultural use. Single family development is an allowable use in agricultural areas and R-1, R-3 is also though considered a residential use. The proposed commercial and residential development is planned along the north line of the new Lynch Road extension. Lynch Road will be four lane limited access arterial with no driveway access permitted. The paving portion of this major road expansion project should be completed this year. The petitioner proposes a new cul-de-sac street extending east from Oak Hill Road. All access to this site for both commercial and residential use must be from this new street to be constructed just north of the Lynch intersection. Comments from County Engineer John Stoll state that if Oak Hill Road should be widened in the future the location of the new street could result in the need to construct a raised median on Oak Hill Road in front of this development. EUTS comments recommend that a deceleration lane be constructed at the Oak Hill/MIB Drive intersection to facilitate right turn movements into the subdivision and to safely and efficiently move traffic through the Oak Hill/Lynch Road intersection.

President Mourdock: Okay, Ms. Cunningham.

Jim Morley: My name is Jim Morley, 605 SE Martin Luther King, Jr. Boulevard and I represent the developer, MIB and Mr. Al Bauer. I have passed out to you a smaller version of the exhibit that I have showing the surrounding property. I'll begin by pointing out the location of this property. You would see superimposed on your map the area indicated as potential development of commercial nature in the county's new Master Plan and you'll note that it's significantly larger than the small area that Mr. Bauer is requesting. The rezoning of R-1 to R-3 then would be the area which I have shaded in green which lies between the commercial and the current R-4 zoning which lies to the east of this property. The property immediately across the street, of course, is currently a service station, bank and then...I meant to the west and then further to the west is Smith & Butterfield and all the other industrial property on down along Lynch Road to Highway 41. Specifically relative to the many uses that are found within C-4 zoning, Mr. Bauer and I met with the neighbors that all adjoin...or most all of the neighbors who immediately adjoin the C-4 zoning and we went through all of the various possible types of uses that might be objectionable and for what reasons and have prepared private

covenants and I would point out that one of the particular advantages that a private covenant offers, although they may not be enforceable by the Plan Commission, they do allow us to do certain things that would not normally be appropriate for government to do such as create things about sound, that no speaker could be mounted high where you would hear the noise into the adjoining yards with speakers no higher than five feet off of the ground. The assumption here is that if you had a bank machine you could operate a bank machine, but even then the decibel level limited to 60 which is approximately what I am speaking at right now. The other types of covenants were additional setback lines, eight foot privacy fence all the way along there and then even further relative to the privacy fence of calling out what it is, the type of wood stockade fence and the standards for maintenance and the covenant of continued maintenance by the commercial property owners. Height limits were a concern to the residents along there and C-4 allows additional height limits. That was stipulated within the private agreements. We even went so far as to deal with color. The north side of buildings on the north half of the real estate shall be finished in neutral earth tone colors that do not sharply contrast with residential homes to the north. Roof parapets extended to cover any rooftop units. We made a real effort as we met with the neighbors to talk about all of the things that affect quality of life in the neighborhood and think about them. We dealt with lighting, that all shielded fixtures so that no light, no light rays, no direct light beams would be going into neighboring yards. Dumpsters had to be completely surround protected. No outside, you know, open dumpsters. There could be no restaurants located on the north half of the development. There would be no billboards in the property and any on premise signs that would advertise property would be, essentially, if it were higher than the real estate, it could occur only along Lynch Road only on the south half of the property. We have...this covenant was written for those adjoining neighbors. Some of those adjoining neighbors have signed it. We did not ask them to give up their right to come here and speak to you tonight in return for agreeing to this. It was an open and free agreement to do that. We believe that we have addressed those major concerns for the property. I want to say that as you look at that intersection and the traffic on that intersection one could see that it's not really appropriate at that corner to assume that marketing you would sell single family residences right at the signal on that. The commercial zoning allows this property to deal with development of the widening lanes in addition to the original request from Rose Zigenfus about the right turn lanes. I've met with John Stoll and we have developed a plan of a continuation of what the county has currently planned for Oak Hill Road of a center left turn lane that would be extended on past the entrance. That does two things. Not only does the center left turn lane allow for easy ingress/egress to this site, but it allows additional stacking room for Oak Hill Road traffic over and above what the design standards are that have been prepared as a part of the project that you have designed. So, I believe that we are enhancing that situation. Obviously, as you know, there may be because of certain factory schedule let outs that are on Lynch that affect the Lynch Road and Oak Hill Road traffic I certainly would not want to say that 100 percent of all times there would



not be congestion at that intersection. As you well know, factory shifts causes a problem at intersections and it's not an extremely long duration, but it's a problem at that point and time. I think those are the major points that I wanted to address and cover with this relative to the C-4 property. Now, on the R-3 property we have, as you can see, we would be proposing residential property all down along the area along Lynch Road. Again, as you may remember the plans on Lynch Road, a portion of Lynch Road along here, are elevated some 23 feet above the surrounding property. As you come down a long incline over this very sharp hill and it was our determination that the most appropriate type of use of that property would be something like an apartment project where you have a little bit more height where you generally have people who do not have large families where there is a lot of activity out in the yard. People in apartments, there may be an activity center, but in general you have smaller families, couples, that live in the apartment and don't spend as much time outside, you know, enjoying and it seemed more appropriate and a better use of the property for apartment buildings because that land use works along a busier highway whereas marketing a single family residential may not work quite as well. The R-3 does seem to work very well with less complaints of noise. The apartment buildings then would in turn shield the noise of Lynch Road from the single family residential area to the north. You might notice on the map that there is a fairly significant distance between the property that we are looking at here and where the most of the single family residences are to the north. There is just about three homes that are immediately adjacent to the R-3, but all of the others are in an area that are separated by wooded area. I think that the R-3 allows us to have a more flexible and appropriate land use immediately adjacent to Lynch Road. Thank you.

President Mourdock: Anyone else wishing to speak for either of these two petitions? Okay, anyone interested in or opposed to these two petitions? I would ask you to please come to the microphone and also for the sake of clarity, if you would, Mr. Morley gets lots of practice doing this before us as you might guess, but he did something that we appreciate which is to speak of the two separate zonings individually. Please direct your comments to one or the other or at least indicate which one you are referring to.

Jerry Bryan: My name is Jerry Bryan and I am just going to speak about the one rezoning from R-1 to C-4. Okay, I'm a 17 year resident of Oak Terrace 2 and since 1980 we've seen a steady growth in homes and also the traffic on Oak Hill Road. Starting with Oak Terrace 1 to Oak Terrace 2 in the '80's and then Bob Romain's Subdivision. Now we've got Oaklynn Park and we've got Keystone in the '90's. All of this has added traffic to Oak Hill Road. According to the studies we now have about 10,000 cars per day according to the Urban Traffic Study on Oak Hill Road, so the traffic is there. Also, if by the year 2005 there will be 30 to 40,000 cars per day on Lynch Road, so between Lynch and Oak Hill you're going to see a lot of traffic. Mr. Bauer wants to rezone from residential to commercial the seven acres that he wants to go from R-1 to C-4 and I am opposed to this rezoning. We have a bad traffic problem now and this

rezoning would make it worse. If you'll visualize traveling south on Oak Hill Road, if you come up to the MIB development and you want to turn left you have to go across northbound traffic one lane or perhaps two depending on how this thing shakes out and once you're in his new development you've got to get out. Now, if you're going to go southbound you've got to go across the northbound lanes and you've got to jump into the southbound lane and proceed and that's a problem. Now I realize they're talking about doing medians and those types of things, but the immediate problem is to get in that commercial development and getting out. I quote from a Subdivision Staff Field Report of April 23, 1997 where the County Engineer expresses concern about the distance between MIB and the Lynch Road intersections on Oak Hill Road which would potentially make left turns difficult at the subdivision entrance due to southbound traffic backing up Oak Hill Road at Lynch intersection. Now, one proposal that we have heard is that the whole Lynch Road/Oak Hill intersection there will be a V north of Lynch Road. Now I live on Elmridge Drive and that V proposal would come right to Elmridge Drive and with all the traffic there there may be a situation where I come up to Oak Hill Road and I can't turn left and go south. I've got to turn right and I don't want to do that and I don't think I should have to do that. At the Area Plan Commissioner which Mr. Mourdock attended on May 7th, Don Bowser, one of the Area Plan members, took a look at this thing and he said, you know, this is a cancer. He said this is a cancer in this area because this is a zoning that is not there and if we let this happen now next year there may be another one and is this suitable for this area? When you put your house next to commercial zoning like that the value goes down 6.8% and I don't want my house devalued. Now, add to the burden of the commercial traffic, bumper-to-bumper, which is there in the morning with T J Maxx, Whirlpool and the school buses. Anybody that's been on Oak Hill Road from 7:00 until 8:00 in the morning you better plan on a little time and also 3:30 to 4:30 in the afternoon which are bottlenecks, but they work themselves out. You've got to worry about the number and severity of collisions and injuries and also the quality of the residential property. For these reasons I urge you to vote no on this rezoning. Thank you.

President Mourdock: Alright, thank you, Mr. Bryan.

Del Schiavone: My name is Del Schiavone. I reside at 3211 Elmridge Drive. I mention to you that my family and I moved into our present location about 12 years ago because it was a nice quiet residential area and since then, as Jerry just told you, with housing developments and so forth north of us on Oak Hill Road traffic is up to almost 10,000 cars a day. One thing that is not on the map that you were just given is the Oaklynn Park Subdivision directly across from 4101 Oak Hill Road where they have extended Elmridge Drive and given it access to Oak Hill Road directly across from my neighbor's driveway. Now you have a new subdivision on the west side of that road that comes out onto Oak Hill Road directly across from a driveway and within 100 yards of this proposed new intersection. I know the intersection is coming.--

President Mourdock: Excuse me.

Del Schiavone: --If you look at that map carefully you will see there is access for a gas station, access for a bank, now Elmridge Drive going west into Oaklynn Park Subdivision and now you want to put another road, another access, directly across from the access to the bank.

President Mourdock: Excuse me, let me clarify something. Are you saying that access is immediately across from the existing Elmridge Drive or immediately across from what is proposed here?

Del Schiavone: I'm sorry, it's immediately across from the bank. There is access to the Citizen's Bank (inaudible comments made away from mike).

President Mourdock: That's why I wanted to ask the question.

Del Schiavone: That wasn't on that map and I wanted to point that out. I might mention that just in the past three months there have been five accidents on the curve where vehicles heading north on Oak Hill Road have run off the road, run into the ditch, run into the field, run into my next door neighbor's yard. These include bodily injuries besides property damage. Have I mentioned that part of my occupation as an educator is that I do teach teenagers to drive? That can be a very hazardous experience.

Commissioner Tuley: For you or them?

Del Schiavone: I've survived to this point, but I will tell you that beginning drivers in particular, and experienced drivers the same way, they have enough things to worry about as they approach a curve without looking for traffic turning in a curve if you look at it. The report that was read a little bit ago talked about a deceleration lane to allow turning into this proposed subdivision. That's on a curve. That's a dangerous curve on Oak Hill Road if you've been out there to take a look at it. You have to be concerned with the traffic problem and the safety of the people driving on there. Evansville has a past record of creating major traffic problems. Look at Burkhardt Road, look at Lloyd Crossing. Just to quote the paper just the other day because now they have stopped development at Lloyd Crossing because there is no access. They can't get the people in and out. What we're asking is we need to do something with the traffic problem before any of this is developed because there is a problem there. An additional problem with the R-3 proposal in the 25 acres to the east of this commercial development, if you put an apartment complex in there you are looking at a potential 300 or 400 cars a day trying to get out of one access road on a curve on Oak Hill Road, no matter which direction they are going to try to go. If they try to go left they're going to have to cross several lanes of northbound traffic. Either that or they'll have to turn right and drive a considerable distance before they can turn and go back into town. Also, on preliminary plans that we talked about several weeks ago, just east of the commercial, proposed commercial area, is a five and a half deep 220 foot by 70 foot water retention basin. This basin is capable of containing over 38,000 cubic feet of water. It also is capable of growing algae, mosquitos, disease carrying insects along with mice,

rats, snakes and other animals. I had to mention those because my wife doesn't like them, so I just thought I would put them in there. This basin must also be considered a nuisance and a potential hazard. Why is it needed? Because the proposed R-3, the 25 plus acres, that they are proposing to rezone is in a floodplain and they don't want to drain commercial property, seven acres, down into a flood area that already contains water, holds water most of the time particularly after it rains. They have to have some place to put it. Lastly, just very briefly because I know Jerry just mentioned this, a commercial development next to residential area has a terrible impact on property value in the area. From the May 6th newspaper it says that appraisers say property values will be down a minimum of 6.4...an average of 6.4%. This is not the Lloyd Expressway. It's not Highway 41 and it's not Diamond Avenue. Does Evansville need another commercial development at this time? If you keep putting commercial next to residential then where are residents supposed to go that want to live in a quiet residential area? Warrick County? Gibson County? I don't know. What I would like to do at this point, please, is I would ask all the residents of the Elmridge area that are opposed to this to please stand. We ask you to vote no on the two proposals currently before you. Thank you for your thoughtful consideration of our views and your careful analysis of this extremely important issue. Thank you.

President Mourdock: Thank you. Anyone else to speak in opposition to these two zonings? Okay, just for the record...go ahead, sir. While he is coming to the microphone just for the record, the comment about the retention basin. I think you were here, Mr. Schiavone, the night that was brought to the Drainage Board and the Deputy County Surveyor did say that they were willing to stipulate that the basin...or willing to agree that the basin not be built because it as of a questionable...it was kind of marginal as far as whether it was needed whether or not by law, so he was willing to agree not to do that. Just for the record. Yes, sir, state your name and address please.

Don Dooley: Don Dooley, 3213 Aspen Drive. I moved to that neighborhood in 1980 and as was already spoken of why the traffic has increased considerably. At any time in the morning why there might be four or five cars in line to turn out of our subdivision along with Elmridge and any of the other roads that intersect with Oak Hill Road. We have numerous school buses which are transporting children to Oak Hill School as well as Vogel School. The traffic is, I think, the main concern and when I hear about apartments going in why in most apartments there is two people in an apartment. That's two more cars. I understand there is another subdivision that's also going to push for apartment dwellings in the back of T J Maxx. This is just going to add more traffic to the problems that we do have. I think that is a big concern right now. We have children along Oak Hill Road on both sides waiting for buses and I think it's really a big concern that the traffic on a two lane road, and that's going to be a very busy intersection, Lynch Road and Oak Hill is going to be very busy. I'm just really concerned about the children and the people living in the area right now to confront additional traffic. Thank you.

President Mourdock: Thank you, Mr. Dooley. Anyone else to speak in opposition? Mr. Morley, you have the chance to rebut.

Jim Morley: I would like to make a couple of comments relative to this property. The one I think that...we have a piece of property that accesses Oak Hill Road and we are trying here to bring an addition to Oak Hill Road that will improve the situation. It is not a limited access right-of-way, so therefore each property owner along Oak Hill Road does have a right to access a public roadway and we have not begun saying, no, Keystone you can't have access to Oak Hill because the neighbors down the way don't like the increase in traffic. There is one other key point here that I want to make and that is that despite all this growth as we talk about it in Vanderburgh County and you well know that the census figures don't support Vanderburgh County as in the midst of a huge population boom. We do have distribution within our county. We certainly do hope that we have some growth and we do have growth of commercial business, many of it from outside of the area. In this particular area of Oak Hill Road, as you might imagine, the businesses that would locate here are service businesses that would cater to the market which would be the needs of the people who live north along Oak Hill Road. I would point out for consideration, Mr. Bauer points out that it would be his intention to actually market or deal with only one portion of the parcel in this year of 1997 and that is the portion of the property south of our proposed entrance street immediately adjacent to Lynch Road and therefore if you, as Commissioners, have a concern and want to see further investigation or examination of the roadway improvements to Oak Hill, then Mr. Bauer is willing to and is offering to you that he would continue this and allow you time to study some alternatives. The R-3 we believe to be appropriate. Obviously, yes, we could go ahead with a single family subdivision, but it would seem apartments would fit better on the site. I offer those as Mr. Bauer has said and if the Commissioners would like a continuance on this matter to examine or even to ask Mr. Bauer to divide the property so that the usage immediately adjacent to the single family homes is not C-4, but is a lesser zoning, a C-2 zoning. He is willing to go with that and that would cause us to go to the July meeting, I believe, and Mr. Bauer is willing to do that if you would like to further examine it.

President Mourdock: Questions for Mr. Morley?

Commissioner Jerrel: I don't know who I want to ask this question, but I went out to the property to look at it and I guess I want a historical question. Ms. Cunningham, you were around, I am assuming, when the property on the west side of the street was rezoned?

Barbara Cunningham: I was not in this capacity, but I was (inaudible). I was not here, but I lived in the neighborhood when that was rezoned, that's correct.

Commissioner Jerrel: Well, I guess I am trying to get a feel for what, you know, how that was accepted in that area.

Barbara Cunningham: It was fought! It was strongly fought in

that area.

Commissioner Jerrel: I talked to a number of people today and I got a sense that there was more concern over the apartments than over, say, a filling station. I got that sense, but maybe not from everybody, but of the...okay, I see some nos, but the ones I talked to I had a feel that they wouldn't have been surprised by someone going into competition with the filling station across the street.

Jim Morley: I would say that's exactly the kind of business that we've talked to is essentially a super station at the corner with a convenience store.

Commissioner Jerrel: How would they get into this, the apartment zoning? How would the people go into it? Let's just say it all happened. How would you go into this area and then into this area also?

Jim Morley: There would be a road network within the apartments. I anticipate that apartment density would not be of the same density that you would see over at Sugar Mill Creek in that type arrangement because one would want to preserve the trees in any of the lower areas and out of the 25 acres that are down there 20 acres would be reasonable to develop. The other five used as buffers and lower areas. It would seem that's the most appropriate use considering its proximity to Lynch.

Commissioner Tuley: Jim, equate 20 acres into number of apartment buildings or units.

Jim Morley: Apartment units in Evansville probably just about the densest project we have is Sugar Mill Creek Apartments and at Sugar Mill Creek Apartments we have some 500 units on approximately 50 acres, so about 10 per acre. If we develop 20 acres of this, then you might anticipate that the maximum density would be 200 apartment units. Many other projects such as Mission Viejo on the east side have a density closer to say seven per acre, seven or eight per acre. At that ratio you would be looking at say 140 apartment units. I would think a range here would be from 140 to a maximum of 200 units. As an alternative look at this if we could go with single family residential and assuming a typical lot of 60 to 65 foot wide and a depth of 110 or 120 feet, you get a density of approximately 5.8 to 6.0 per acre. You really don't step up that significantly in density for the apartment property versus the residential that is typically being built today. As you know, with sewers we don't have such large lots, so I would say that the apartments would be about 20 to 30% more dense than single family residential.

President Mourdock: The 20 acres that you are citing though--

Jim Morley: Yes.

President Mourdock: --that would be R-3--

Jim Morley: Yes.

President Mourdock: --the total rezoning would be 20 acres correct?

Jim Morley: The total would be 25, but there is about five acres that is like ravines and trees.

President Mourdock: Okay, I thought it was smaller than that.

Jim Morley: There's only 20 usable acres.

President Mourdock: Okay, I thought it was less than 20 usable.

Jim Morley: No, there is approximately 20 usable.

President Mourdock: Question continuing with what Bettye Lou's question was then, what you are currently showing as a cul-de-sac at the east end of the C-4 would be extended in to that area for what you're calling R-3?

Jim Morley: Correct. Typically it's been the past policy of the county to say that we don't encourage you to create public roads through an apartment project and so what you have is a public road that would access the boundaries of the apartment project, but all streets be developed, owned and maintained by the apartment owner and the county would have no obligations.

President Mourdock: In your earlier remarks you said that private covenants are in force about sound, fencing, standards of maintenance, height limits less than permitted under the C-4, that there would be no billboards, no restaurants on the north half of the property and adjoining neighbors signed a covenant agreeing to that? Did I understand that correctly?

Jim Morley: We have...we made the agreement in the name of the seven property owners who immediately adjoin.

President Mourdock: Who adjoin this R-1 to C-4 piece?

Jim Morley: Who adjoin the C-4. If you would count them across there you would see approximately seven parcels that touch and each of the adjoining parcels. The feeling was that they are the ones who know whether the light is coming into their yard or whether the noise is too loud.

President Mourdock: You said some of those seven signed that covenant?

Jim Morley: Yes, some of those seven have signed. I do have--

President Mourdock: Are any of those seven in the audience? Okay, thank you, sir.

Jim Morley: I don't have the signed version. I'm sorry, I have the version...yes, well I've got one of the signatures.

President Mourdock: My main question is how many of those seven were signed?

Jim Morley: I think two.

President Mourdock: Two of the seven?

Jim Morley: I think two have signed so far. Since we made it open it didn't matter. The feeling was that if any of those seven don't want to be bothered with the enforcement or whatever it's open. It doesn't matter. It's their choice. If they wish to be a part of the ability to enforce this they could join. If they don't wish to they would depend on their neighbor to enforce.

Del Schiavone: Can I say something here?

President Mourdock: You'll get your chance in a moment, yeah. Go ahead, Jim.

Jim Morley: That's really basically all that I have is my rebuttal and offer of extension if you do have desire to see less than C-4 next to the neighborhood. I did want to make sure that you understood that offer and that time-wise we don't mind coming back.

Commissioner Jerrel: Ms. Cunningham, explain to me the difference between C-2 and C-4.

Barbara Cunningham: It's a difference of a large number of use groups and it's a difference of height of buildings. I mean there are various differences. C-4 is the highest intensity commercial use and generally has some uses in there that are not acceptable next to residential. C-2 though can have restaurants and things like that. I don't...of all times I don't have my code book where I can read it to you, but Joe does. Do you want to know some of the uses allowed in C-2?

Commissioner Jerrel: I would like to know the significant differences.

Barbara Cunningham: Okay, I can't read Joe's code book, but I'll find it.

President Mourdock: While she is looking let me state that your earlier comments about having the buffers that the C-2's would make more of a buffer typical of what the APC is looking for.

Barbara Cunningham: CO-2 makes more of a buffer. CO is an office. That's usually what we consider a buffer. CO-2 would probably offer office use. Here we go and here is your C-1. These are uses for C-1 and C-2 it can be and then you get back here to use group eight which is C-2 and it allows drug stores, business school, furniture repair, lawn mower repair and then when you get into the heavier uses which are heavier duty uses which are retail stores specializing in awnings, you know, bigger uses. I think what they were more interested in the C-4 for possibly was automobile specialized services. An automobile service station is allowed in a C-2 zone.

Commissioner Jerrel: Okay, that's what I wanted to see.

President Mourdock: Any other questions for Mr. Morley? Mr. Schiavone.



Del Schiavone: In response to the question that was asked of Mr. Morley about the access from R-3. Again, it is out through one driveway, one road, coming out on a curve and as I mentioned earlier 300 to 400 cars minimum trying to get out on Oak Hill Road. Just a comment about the covenants, the agreements. The meeting took place at my house, I can tell you that, but nowhere the people I talked to before this or since then did it ever say or did anybody ever tell me that somebody was going to turn around and try to stick me in the back with these. There is not one person that lives in that neighborhood that wants commercial development in their backyard and I'm sure you people would feel the same way if the roles were reversed. I did not sign the paper and I am not going to sign it. The purpose of the meeting was to guarantee quality of living in that neighborhood for whoever is living at 3211 Elmridge Drive. Whether it is my family or somebody else. I might also mention, you're talking about setbacks. I checked just yesterday and between Oaklynn and Smith & Butterfield there is a minimum of 100 feet between the back of the property lines on Oak Hill...Oaklynn, I'm sorry, the south side of that development would be Smith & Butterfield. If you go over to Danbury Crest where Dan Buck is planning or trying to add condos or apartments there is even more distance. Right now I am looking at having commercial buildings within 20 feet of my back property line. That's what I have been told. That's why we had the meeting to try to make it livable in that area. Thank you.

President Mourdock: Okay, and just to clarify again if you signed, and I understand you didn't, as a covenant this would not just effect you, but to whomever that property was ultimately conveyed to.

Del Schiavone: Yes, exactly.

President Mourdock: Just wanted to make sure you understood that. Okay, I don't see anyone else coming to the microphone to make a comment. Zonings are the toughest part of this job, I will assure you. We have two of them to vote on this evening and I guess we have to consider as well Mr. Morley's comments from Mr. Bauer about possibly deferring one of these or both of them.

Jim Morley: Mr. Bauer is here if you want to speak with him.

President Mourdock: Okay, well, I heard the comment made so I accept it on faith. I'll look to the members of the Board.

Commissioner Jerrel: Okay, I don't know which one is first.

President Mourdock: Okay, well, just to clarify--

Joe Harrison, Jr.: If I could clarify one thing. If you all do vote on it they can't come back, so if they want defer it...if that is something that they want to do they better...I would make that plea if that is something you want to do otherwise this Board will vote.

Commissioner Jerrel: Well, in that case I am going to make a motion. I am going to make a motion on item number three.

President Mourdock: The one that is R-3, the one furthest west?

Commissioner Jerrel: Yes.

President Mourdock: Okay, that is 97-30-PC/VC6-97.

Commissioner Jerrel: This is just a motion to get this before us, correct? I'll move approval of item number three which is the R-1 to R-3.

Commissioner Tuley: For the purpose of a vote I'll second.

President Mourdock: That is what you were doing? I want to be sure.

Commissioner Jerrel: Well, you want it on the table.

President Mourdock: Okay, you're ready to vote?

Commissioner Jerrel: Sure.

President Mourdock: Okay. Alright, we have a motion and a second to vote on the R-1 to R-3, you said?

Commissioner Jerrel: Yes.

President Mourdock: Which is VC7-97. Since it is an ordinance, again, we'll have a roll call vote. Commissioner Tuley?

Commissioner Tuley: Although I think the petitioner has tried to come up with the best use of that land, they've tried to be workable with the neighbors, but the one thing that you cannot work out or solve is Oak Hill Road and how narrow and how dangerous that curve and all of Oak Hill Road is. I'm voting no.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: No.

President Mourdock: I will vote no. The next item then that we would have to consider would be the zoning from R-1 to C-4.

Commissioner Jerrel: I would ask...I would give the right to have the motion to defer offered. I don't...I mean, just because we have voted no on the residential.

Jim Morley: I understand, I understand. Of course, I have talked with Mr. Stoll about this as we are now addressing a situation here with the rejection of the R-3 zoning, now we are dealing with a very small parcel of ground, seven acres, at that corner so traffic impact...we're not bringing new traffic to the area essentially. Mr. Bauer is very willing to come back if the Commissioners would like to see addition...we have created, as you see, private agreements. If it is your desire that those...that a portion of those which struck most...we struck well over half of all of the land uses in C-2 and C-4 in the private agreements and as Commissioners if you feel more comfortable in seeing the striking of those things as a part of

the covenants of this we would be very happy to come back and do that and all you have to say is I would like to see those portions of that which I can enforce which are land uses. We make that offer. Just a comment from you we would say sure, fine we'll redo that.

President Mourdock: As I mentioned a moment ago zonings are always the toughest part of this job. I do sense that given the fact that you had tried to work with the neighbors in the past that you are willing to consider going from C-4 to some lesser zoning to work more in accordance with APC's plans regarding a better buffer. I think that would be appropriate although I would look to one of my other members here to make that as a motion that you would resubmit.

Jim Morley: Just hearing it from one of you is enough for me to say that I would like permission to continue or to resubmit and to withdraw as submitted as C-4 and we will resubmit a new plan. We will readvertise to all the of neighbors and redescribe the property and we will create covenants relative to the land uses which Barbara's office can deal with as protective or conditions of the zoning itself.

Barbara Cunningham: If they do that they come back to Area Plan.

President Mourdock: Understood, either from a legal point of view--

Commissioner Jerrel: There is no motion because it was withdrawn.

President Mourdock: Well, it has to be moved to be withdrawn.

Commissioner Jerrel: Oh, I'll make the motion to withdraw--

Joe Harrison, Jr.: Or to accept the withdrawal.

Commissioner Jerrel: Yeah.

Barbara Cunningham: You better not. A withdrawal is the same as a denial. You're asking to continue so that you may change--

Jim Morley: Yes, continue for changes.

Commissioner Jerrel: Okay.

Joe Harrison, Jr.: You're going to have to go back to Area Plan.

Jim Morley: Or whatever is the appropriate language.

Joe Harrison, Jr.: So what you would want to do, I guess, would be to defer this.

Commissioner Jerrel: I move that we defer VC6-97.

Commissioner Tuley: I'll second that motion.

President Mourdock: I will say so ordered.

Jim Morley: Thank you.

President Mourdock: To all the remonstrators, I appreciate the fact that you presented the information as you did.

Del Schiavone: Could you explain that, please?

President Mourdock: Sure. The motion regarding or the petition regarding the multi family housing in R-1 to R-3 we rejected. At the present that remains zoned what it presently which is R-1, single family residents.

Jim Morley: It's AG.

President Mourdock: Okay, it's currently AG. The second thing we just did and I am sorry if we sounded very bureaucratic, but we heard the developer say that he sensed that there was resistance among this Board to change it to C-4 which has a broader type of use that could be there, so he is asking to come back before Area Plan basically recycle through the hearing process. He is going to downgrade from C-4 to C-2 or something lower so that there may be a more compatible blend between what I am going to suspect is on the south side of the road which you may still want to say is C-4 and what is on the north side of the road which is adjacent to those seven properties that were discussed this evening. Again, the important thing here is to do that he is stepping out of the process and recycling it all the way through trying to find something that works with the overall plan of the Area Plan Commission for buffers and more with the neighbors. Again, this process continues and sometimes the system works folks.

Barbara Cunningham: You will also be renotified. Those that were notified will be renotified. It would be readvertised and it could not come back to Area Plan Commission until the July 2nd meeting.

President Mourdock: Okay. Thank you all for your patience.

<b>VC20-96</b>	<b>John Crabtree</b>	<b>Final reading</b>
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President Mourdock: Okay, the next petition we have before us this evening is VC20-96. The petitioner is John Crabtree and the address is 35 South Tekoppel. Mr. Crabtree is requesting a rezoning from R-1 to C-4. Anyone here to testify on this issue please raise your hand and be sworn by the County Attorney.

Carol McClintock: I'm just going to ask for a--

Joe Harrison, Jr.: Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Carol McClintock: I do. I am Carol McClintock, with Shively & Kent, representing the petitioner. We are here to request that the petition be withdrawn. The City Council denied the petition 4/3. Well, actually they voted four yes and three no, but it was denied because there was not five votes. Mr. Crabtree is asking that the petition be withdrawn.

Commissioner Jerrel: I move that the Crabtree petition--

President Mourdock: VC20-96.

Commissioner Jerrel: --be withdrawn.

Commissioner Tuley: Second.

President Mourdock: So ordered.

Joe Harrison, Jr.: What you might do is on this one and the last one should you have a roll call, you think, on both of those? On the last one and this one?

Commissioner Jerrel: You mean the vote on--

Joe Harrison, Jr.: Is that okay just to be technical?

President Mourdock: Yeah, let's go backwards then a moment to--

Joe Harrison, Jr.: What you may want to do is say deferral to amend the previous one for VC6-97 from R-1 to C-4 and they sought deferral to amend.

President Mourdock: Is there a motion that we defer to amend VC6-97?

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: For the purposes of propriety, I would ask for a roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes.

Joe Harrison, Jr.: Then the next one would be--

President Mourdock: VC20-96 for the motion to withdraw the petition of John Crabtree for 35 South Tekoppel. Is there a motion for withdrawal?

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes. Is there a motion for

adjournment?

Commissioner Jerrel: So moved.

President Mourdock: I need a second to adjourn.

Commissioner Tuley: So moved...second.

President Mourdock: So ordered.

The meeting was adjourned at 8:26 p.m.

**Vanderburgh County  
Rezoning Meeting  
May 19, 1997**

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***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene Timmons  
Barbara Cunningham  
Tom Bodkin  
Del Schiavone  
Jerry Bryan  
Don Dooley  
Jim Morley  
Carol McClintock  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

---

Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

---

Patrick Tuley, Member

Recorded and transcribed by Charlene Timmons

**Vanderburgh County  
Rezoning Meeting  
June 16, 1997**

President Mourdock: I would like to call to order the rezoning hearing for the date of June 16th for the Vanderburgh County Commission acting as the...or rezoning. First we have only two items on our agenda for this evening and these are both on first readings.

<b>VC8-97</b>	<b>Jacqueline R. Temme</b>	<b>First reading</b>
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President Mourdock: The first item is a verified petition for rezoning ordinance number VC8-97. The Petitioner is Jacqueline R. Temme--

Commissioner Jerrel: Temme.

President Mourdock: T-e-m-m-e requesting from the commonly known address 100 South Boehne Camp Road. The real estate presently is designated as agricultural and the requested change is to multi-family R-3.

Commissioner Jerrel: I would like to move approval of that first reading.

Commissioner Tuley: And forward it to APC for recommendation?

Commissioner Jerrel: Yes and forwarded to.

Commissioner Tuley: I will second.

President Mourdock: I will say so ordered. Do we need to do those on first as a roll call?

Joe Harrison, Jr.: Yeah, why don't you to be safe.

President Mourdock: Alright. Roll call vote then, Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: I vote yes.

<b>VC9-97</b>	<b>Decem Investments</b>	<b>First reading</b>
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President Mourdock: Our second, also for a first reading, is ordinance number VC9-97 submitted by Decem Investments. Their address 10287 Wexford Court. The address in question is 1300 North Burkhardt Road. The proposed...I'm sorry. The present land use is agricultural and mixed use commercial and the proposed land use is mixed use commercial. I would ask for a motion on first reading that this be forwarded to Area Plan for further consideration.

Commissioner Jerrel: I move approval to forward to Area Plan.



Commissioner Tuley: Second.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes.

**Approval of minutes**

President Mourdock: Any other business before us for rezoning?

Charlene Timmons: Approval of minutes.

President Mourdock: Pardon?

Commissioner Tuley: Approval of the minutes.

President Mourdock: Oh, thank you, Charlene. Do we have approval of minutes then from the meeting--

Commissioner Tuley: In May.

President Mourdock: --in May?

Commissioner Jerrel: I would approve them, but I don't have them.

Commissioner Tuley: Yeah, I don't either.

Charlene Timmons: I turned those minutes in before I went on vacation, so I know you guys have them somewhere.

Commissioner Tuley: Sure, sure.

Commissioner Jerrel: Well, I could on good faith approve them.

Commissioner Tuley: Did you take them, Charlene?

Charlene Timmons: Huh?

Commissioner Tuley: Were you the one that took them?

Charlene Timmons: Yes.

Joe Harrison, Jr.: May 19th? Was that the meeting?

Charlene Timmons: Just a second, I have it right here.

President Mourdock: It would have been, yes, May 19th.

Charlene Timmons: With your stamp on it.

Commissioner Jerrel: Okay, thank you. I hated to do that, but I really hadn't seen them.

President Mourdock: Is there a motion to approve the minutes of May 19th?

Charlene Timmons: I turned them in on June 6th to your office.

President Mourdock: We didn't doubt you.

Commissioner Jerrel: No, we never do. I will move approval of the minutes of the May 19th meeting.

Commissioner Tuley: Second. I heard May 16th there for some reason and then I heard May 19th, so I was confused.

President Mourdock: Okay, there was a motion and a second, so ordered. Any other business before us this evening?

Commissioner Jerrel: Oh, I remember. This was that meeting where remember? We moved to...I remember that.

Commissioner Tuley: Which one was it?

President Mourdock: You were here.

Commissioner Tuley: Which one?

Commissioner Jerrel: I was here. That one where we moved, you know, item two became item one?

President Mourdock: On Oak Hill.

Commissioner Tuley: Oh, yes.

Commissioner Jerrel: Okay, I don't even need to look at those. I remember all that.

Commissioner Tuley: I remember.

President Mourdock: Motion for adjournment.

Commissioner Jerrel: So moved.

Commissioner Tuley: Second.

President Mourdock: So ordered.

The meeting was adjourned at 7:17 p.m.

*Those in attendance:*

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene Timmons  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

---

Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
July 21, 1997**

**Call to order**

President Mourdock: I would like to call to order the meeting of July 21, 1997 for the rezonings for the Vanderburgh County Commission.

**Approval of minutes**

President Mourdock: You have in your packets, again, the minutes and the first item of business is the approval of those minutes from last month.

Commissioner Jerrel: I would like to move approval of the June 16 Rezoning Meeting minutes.

Commissioner Tuley: Second.

President Mourdock: So ordered.

**VC-10-97      Hughes A. Simmons      First reading**

President Mourdock: For first reading tonight we have petition VC-10-97. The petitioner is a Hughes A. Simmons. The address is 429 North Red Bank Road requesting a change from R-4 to C-4 on the first reading.

Commissioner Tuley: I'll move approval on first reading of VC-10-97 and that it be forwarded to Area Plan.

Commissioner Jerrel: Second.

President Mourdock: So ordered. Do we need a roll call vote on first reading?

Joe Harrison, Jr.: Yeah, I would. I would.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes.

**VC-8-97      Jacqueline Temme      Final reading**

President Mourdock: Final readings, and before we begin those, obviously, it's not a full house tonight. We would ask however that if you are going to address the Commission, please come to the microphone, state your name and address and also all the testimony we ask that you give tonight will be under oath as well. So, starting off, Barbara Cunningham, from the Area Plan

Commission.

Joe Harrison, Jr.: Before that anyone who wishes to speak on, I guess, the first one.

President Mourdock: VC-8-97, a Jacqueline Temme, 100 South Boehne Camp Road requesting AG to R-3.

Joe Harrison, Jr.: All those who wish to speak on that particular rezoning petition, please raise their hands.

Barbara Cunningham: Well, you better in case you do.

Joe Harrison, Jr.: Do you swear and affirm that the testimony you may give is true and accurate so help you God?

Group response: I do.

Barbara Cunningham: Daniel Temme is the representative for Jacqueline Temme in this petition to rezone the residential property of 100 South Boehne Camp Road from Agricultural to R-3. This is an 8.25 acre site located on the east side of Boehne Camp Road between the Lloyd Expressway and Hogue. The owner is Ida C. DeMuth. The petition was recommended for approval by the Area Plan Commission, nine yes and zero no votes. This site is located on the east side of Boehne Camp, a residential collector street, which experiences considerable traffic especially during peak hours due to Perry Heights School, a nursing home, a church, Mission Viejo Apartment Complex and numerous residences accessing this road between Lloyd and Hogue. Access to the proposed apartment will be limited to a single curb cut and may require the installation of accel/decel lanes. This is a request to rezone for multi-family residential development. No information has been submitted by the Temmes which addresses the number of units proposed for this site plan for this site so the site plan will be addressed by the Site Review and Subdivision Review Committee upon submission of plans for the development of the site for apartments. Public utilities are available to the site. Water and sewer must be extended. The 1996 Comprehensive Plan Future Land Use Map 2010 recommends this area for residential use. This step up in zoning to R-3 for this eight acre site is consistent with the overall plan for the area. This site is located adjacent north of Mission Viejo. The Comprehensive Plan recognizes that multi-family is an appropriate buffer use adjacent to single-family residential. The proposed rezoning is consistent with the growth on the west side and USI.

President Mourdock: Comments? Anyone in the audience wishing to address this issue? Questions or comments from the Board?

Commissioner Jerrel: No.

Commissioner Tuley: No, I don't have any questions.

Commissioner Jerrel: I would like to move approval.

Commissioner Tuley: Second.

President Mourdock: Alright, roll call vote then for VC-8-97 from AG to R-3. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes. They should all be this painless!

Barbara Cunningham: I've never seen an apartment complex (inaudible comments, mike not on).

President Mourdock: I would also add we had the Area Plan Commission hearing and was there one question raised, I think, about a driveway?

<b>VC-9-97      Decem Investments, Inc.      Final reading</b>
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President Mourdock: The next item on our then (inaudible, mike not on).

Joe Harrison, Jr.: All those who wish to make comments on this particular rezoning petition, VC-9-97, please raise their hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Joe Ream: I do.

Joe Harrison, Jr.: Thank you.

Barbara Cunningham: Joe Ream is the representative for Decem Investment in the petition to rezone 51.8 acres at 1300 North Burkhardt from C-2 with a Section 4 Use and Development Commitment to C-2. The site is located on the west side of Burkhardt between Oak Grove and Virginia. Owners of the site are Decem Investments, Stanley Unfried, etal and Eastpark Development & Griffin Guagenti & Ream. In 1990 at the time of the initial rezoning of the site to C-2 a Use and Development...and this was for the total site...a Use and Development Commitment was included as part of the ordinance which addressed right-of-way for an extension of Kimber Lane planned as part of the transportation network for that area. Since that time as the area has grown and developed commercially, the overall transportation plan for Burkhardt/Lloyd has been revised and adopted by the Area Plan Commission and the County Commissioners in May of 1997. The effect of this rezoning by the petitioners is to remove the commitments for right-of-way to extend Kimber Lane. The 1990 Use and Development Commitment addressed additional road improvements. Vogel Road and Columbia Street have been implemented. Is Columbia in there, Joe?

Joe Ream: Yes.

Barbara Cunningham: Okay. The right-of-way and construction of half of Kimber Lane, which is what was committed at the zoning

in 1990 has not be undertaken. Decem presented a new subdivision plat, Waterford Place, which was heard at their July Area Plan Commission meeting along with the rezoning. Area Plan Commission recommended approval of both the rezoning and the subdivision by a seven yes zero no two abstention vote. The subdivision was approved with the condition placed on the approval that the Kimber Lane location or lack of location would be subject to the County Commissioners' recommendation. County Commissioners will need to determine if Kimber Lane is necessary for the overall transportation in the area. Burkhardt Road is a two lane connector roadway with an average daily traffic volume of approximately 16,000 vehicles, that's in 1995, per day. Vanderburgh County is currently working on improving Burkhardt Road to a four lane facility to accommodate the existing and projected traffic volumes. I forgot to pass out...why don't I pass out...these are the EUTS' reports that address this subdivision. Vanderburgh County is working on improving Burkhardt Road. The purpose of this rezoning is to address traffic and transportation concerns. The County Engineer, who is still out in the hall, states construction of a frontage road between Columbia Street and Vogel in the location shown on the site plan submitted with the rezoning will conform to the plan for access roads along Burkhardt Road. The plan was adopted by the County Commissioners on May 19, 1997. The construction of the road in the location shown is a more suitable location for a road than the original plan for a road that was done at the time of the rezoning on the west line of this property. The west line of this property where the rezoning was supposed to put in Kimber Lane is the approximate center of Stockfleth Ditch which is a legal drain. Depending on how the site is developed, Kimber Lane may still be needed as part of a future road network. EUTS' comments that should Lots 9 and 10 in Waterford Place Subdivision be further subdivided, not developed as a large use development, the subdivision should include the extension of Kimber from Columbia to Vogel located in alignment with the existing Kimber Lane south of Columbia Street. The Comprehensive Plan calls for this portion of Burkhardt Road to be developed as a commercial corridor. The Comprehensive Plan supports frontage roads and consolidated access points for commercial use and recommends limiting curb cuts to avoid the creation of any additional vehicle conflict points. I brought the map of the area. I don't know where I put it. In here I guess. The map that you have...the little maps that you got the night of the meeting...that's why I wish John was in here. The little maps that you had the night of the meeting--

Joe Ream: It's right there, Barbara, to your left on the board.

President Mourdock: Right behind you.

Barbara Cunningham: Oh, is that it? Well, I've got it here too. Here is Columbia as proposed. Here is Virginia as proposed. Here is Vogel as proposed. The little map...and here is Kimber Lane, okay? The little maps that were passed out the night it was done...there it is. John is here. I remember John talked about the frontage road being put in here that he thought could possibly take the place of the extension of Kimber. Now Kimber in reality the way the zoning was done would be right along this

line of Stockfleth Ditch is where it was proposed at the time of zoning. What happened was that was one of those things, and we don't do this anymore and we didn't like to do it then, but the attorney at the time promised this after technical and everybody had a chance, I even think it was after the Plan Commission meeting. Do you remember, Joe? Were you there?

Joe Ream: We didn't own it at the time.

Barbara Cunningham: No, but you were there at the meeting.

Joe Ream: Yeah.

Barbara Cunningham: It was after that. It was after the fact, so if technical would have seen it they would have never allowed that to be in the middle of Stockfleth Ditch, see. Here is where Kimber Lane would extend and this is where it shows...this map was not changed. This is where Kimber Lane is now. This the WAL-MART/Kmart whatever that part is in there. This is your Virginia and Kimber Lane is now an access there. This is a little insurance agency. It's not a very big road here yet, but none of this has really been rezoned yet in this area. This is where Kimber Lane would plug in here.

President Mourdock: That last thing you just pointed to is where it could be?

Barbara Cunningham: This is where it could be. This is where the Use and Development Commitment puts it.

President Mourdock: It's up to...what's that? Columbia?

Barbara Cunningham: Well, it's not really up to Columbia very well.

President Mourdock: It exists from here to here and right now it does not extend from here to here.

Barbara Cunningham: It exists as a residential road in essence. Wouldn't you say?

Commissioner Tuley: It does not exist here, but this is the plot we're looking at? Not right here?

Barbara Cunningham: Yes, this is what you're looking at tonight.

President Mourdock: The right-of-way that was originally dedicated was actually right along the ditch.

Barbara Cunningham: It would be along there. That's right. They have put in...see, when it first came in for rezoning, this little piece has been added on to it, but this whole section like this was all where the zoning was where they were going to put Kimber and they were going to put Vogel and they were going to put Columbia. They've done Columbia.

Commissioner Tuley: What's this one here?

Barbara Cunningham: That's Vogel, this is...that goes out



to...is this Oak Grove or is that Metro? What is that?

John Stoll: That would have been Kimber extended in its original alignment because that is right down the center.

Barbara Cunningham: Is that Kimber?

John Stoll: If you extend the center line ditch northward--

Barbara Cunningham: So it would of been like that.

Commissioner Tuley: Like that.

Barbara Cunningham: Yeah. Is this Oak Grove?

Commissioner Tuley: Yeah, that's Oak Grove.

Barbara Cunningham: Yeah.

Commissioner Tuley: Is this rezoned now or is it still AG?

Barbara Cunningham: No, this is rezoned. This is all rezoned. I don't believe...I don't know. I don't believe that area is.

Commissioner Tuley: Even with this development that's still not--  
-

Barbara Cunningham: Their subdivision goes to here. Is that right? Yeah.

Commissioner Tuley: Is the right-of-way dedicated for this part of Kimber Lane here?

John Stoll: No.

Barbara Cunningham: Well, there is as part of this zoning.

Commissioner Tuley: As part of this one?

Barbara Cunningham: Yeah.

John Stoll: But I don't believe it was ever dedicated was it?

Barbara Cunningham: No.

John Stoll: That would basically run through Bernardin Lochmueller's parking lot.

Barbara Cunningham: It was promised as part of that zoning, so right here this section would be as part of that zoning that is back before you now.

President Mourdock: Okay, thank you. Questions of the Board of Barbara beyond what we just had?

Commissioner Jerrel: No except I have--

President Mourdock: Let me try it on this map. This is the

subject property. The right-of-way that was dedicated initially was right here along this ditch for this road.

Commissioner Jerrel: Right.

President Mourdock: Now the question is since there is no dedication of right-of-way along this line--

Barbara Cunningham: There's none on that line. What they promised to put Kimber...they have changed where they put Columbia in, for instance, because we found a more advantageous place to put it, so Columbia has been put in a different place.

President Mourdock: But the "they" who dedicated this easement for Kimber Lane here was the predecessor to Mr. Ream is that correct?

Barbara Cunningham: Yeah, they were the original owners of the property.

President Mourdock: Okay.

Barbara Cunningham: The Use and Development Commitment goes with the property, so Mr. Ream when he bought it inherited that commitment.

President Mourdock: Okay, to put in the road here.

Barbara Cunningham: You didn't put in...did you put in Vogel?

Joe Ream: Sure.

Barbara Cunningham: Okay, they put in Vogel.

Joe Ream: And Columbia.

Barbara Cunningham: And they put in Columbia.

Commissioner Tuley: If I understand it correctly, though, the question is should this not go straight up or should we take the route that we have that's been dedicated for that? Is that correct?

Barbara Cunningham: Or what they want you to do is they want to get rid of that dedication.

Commissioner Tuley: Completely?

Barbara Cunningham: They want to get rid of that completely. That's why they're here tonight.

John Stoll: That dedication does run down the center line of the ditch, so it's really not feasible to build the road in that location otherwise you would have a big piped ditch running right underneath the center line of the road and that--

Commissioner Jerrel: Okay, but let Mr...maybe Mr. Ream, Joe, can you speak to Kimber Lane going straight across then?

Joe Ream: Sure. Let me say a couple of things. For the record, my name is Joe Ream. I'm the developer for this project. One, is that as Barbara correctly stated that Kimber Lane deal came up when ...at kind of a last minute in a meeting like this when the one group was trying to sale the property and their attorney was trying to kind of, you know, get it rezoned and that is kind of how that happened. You're right, it's not in a good place. Okay, the other thing that I would say is that there was a need for something going through that area. The most pressing need was for a frontage road, so I think everybody thought, and I'll just speak for myself, but we talked to Rose Zigenfus, Barbara and John, that it would make a heck of a lot more sense to put in a frontage road than to think that some day you may put in Kimber Lane along that ditch, so that was the--

President Mourdock: That frontage road currently exists as--

Commissioner Tuley: Tutor Lane--

Joe Ream: Tutor Lane extension, so I don't know if you remember, but at that meeting after everybody agreed that they liked this plan that you have in front of you that doesn't show Kimber Lane between Vogel and Columbia, I got up and said that we would go ahead and promise to put in the Tutor Lane extension. It goes all the way from Vogel to Columbia and then we have one entrance at Waterford Place in between.

Barbara Cunningham: Right now it is here.

Commissioner Jerrel: And then one at Columbia?

Joe Ream: Well, yeah, there is an intersection at Columbia. Columbia, Waterford Place and Vogel. Then the other thing that was unsaid is we're closing two driveways along that stretch, so we're getting one new one and taking two old ones away, so we are trying to cooperate, I think.

Commissioner Jerrel: So the straight shot access instead of it being Kimber, they're going to turn right on Columbia and go on the access road all the way down to Oak Grove?

Joe Ream: They could. The other thing that could happen in the future is Metro...the plan calls for Metro being extended and that's pretty close to--

Barbara Cunningham: That's not exactly...no, I'm not talking about Metro now. I'm talking about Tutor. Right now, Bettye Lou, Tutor is not an accepted county road. It's a private road with dedicated right-of-way which they just did. It just goes here to this little thing. This is just proposed. This isn't even...this isn't done.

President Mourdock: But the section of Tutor--

Barbara Cunningham: But the rest of it they don't own or that's not done.

President Mourdock: What you just identified on the map, Joe, is Tutor extension that will be to county standards? It is your intention to dedicate that as a public road when complete?

Joe Ream: Right. Now we've turned the plans in to John. Should I tell them about the curb on the one side? Okay, it could take a little time before he accepts it because we are going to build two lanes and we are going to build the east lane with a curb because we have all those frontage lots along Burkhardt. We are going to build the west lane without a curb because we hope to have a big user back there and hope to be able to drive into this big parking lot. He probably won't accept it until we kind of complete all that, but the road itself is being built, you know, it's seven inch thick concrete. It's a good road.

President Mourdock: Let me go back, and realizing this is a dangerous way to ask a question, but it's your intention to ultimately have that road dedicated to the county which means it would, obviously, be to county standards?

Joe Ream: Yes.

John Stoll: Right, it will be county standard. According to the way it was drawn, even though it has not been approved by the Commissioners as of yet, it would be county standard the way Mr. Ream's engineer has drawn it. The only thing that is missing initially is the curb down the west line of the road.

President Mourdock: Okay. Barbara and John, if, in fact, Kimber Lane were extended from its present position south of this property or straight line through the center of this property, would it connect to an easement that the county presently has to continue Kimber Lane straight north?

Barbara Cunningham: With this you still have...you would have Kimber Lane...you should have Kimber Lane here is what you have. That's what you have now. This is what they're asking to have moved is Kimber Lane all along here, but that includes this too.

President Mourdock: Okay, my question is do we have right-of-way and the answer is no.

Barbara Cunningham: No, but you have it here. That's what is part of this.

President Mourdock: That's right. I'm thinking of it strictly as far as streets and traffic flow--

Commissioner Tuley: It doesn't go anywhere.

Barbara Cunningham: No.

President Mourdock: At some point we are either going to bend it this way or bend it this way.

John Stoll: Right.

Barbara Cunningham: Or come up here.

John Stoll: That piece over there has not been dedicated either.

Barbara Cunningham: What?

John Stoll: I don't believe that piece there to the west--

Barbara Cunningham: Well, it might not be, but that was part of the zoning.

John Stoll: Right, but as it stands now it doesn't exist as far as I know.

Commissioner Jerrel: Do you own the, you know, you've got this outlined in yellow. That's the ground that you control?

Joe Ream: Yes.

Commissioner Tuley: This is the ditch over here. That's where we have right-of-way now. It does exist up to this point.

(Several conversations going on off mike.)

President Mourdock: Joe, in the EUTS report let me just read out of it:

"Should Lots 9 and 10 be further subdivided, not developed as a large use development, the subdivision should include the extension of Kimber Lane from Columbia Street to Vogel Road located in alignment with the existing Kimber Lane south of Columbia Street."

Understand what that said. It is your intention to not further subdivide 9 and 10 correct? You want...what you are trying to do is market it as one big block and not have that other extension through there?

Joe Ream: This is an original and it is getting a little yellow, but there's two lots here. There could be two big boxes or there could be, you know, some smaller stores like that. I would say this should...this was our original plan and so far we've stuck with it, but you can never outguess a customer.

President Mourdock: Right.

Joe Ream: Some day it might change. If we divided this up very much, you know, if we divided that up in to let's say eight lots or something, then we would be willing to put Kimber Lane in.

President Mourdock: The way you've drawn this on here, is this Tutor through here?

Joe Ream: Yeah, that's the Tutor Lane extension. See this is an old drawing.

President Mourdock: Okay, right.

Joe Ream: This would be Columbia, Tutor Lane extension, this part is in. This is Kimber Lane right here.

President Mourdock: Right.

Joe Ream: You could drive through there if we did it this way.

President Mourdock: But the present Kimber Lane down here comes in right here?

Joe Ream: No, it really comes in right here.

President Mourdock: Oh, okay, okay. Right. Here's where the ditch--

Joe Ream: Right, here is the ditch.

President Mourdock: So the right-of-way that was granted is over here. The present one comes in here.

Joe Ream: Yes.

Commissioner Jerrel: So what he just read that should Lots 9 and 10 be further subdivided, not developed as a large use development, this subdivision that would be what you would agree to extend Kimber Lane?

Joe Ream: If it is divided--

Commissioner Jerrel: Into smaller--

Joe Ream: --into smaller lots. It depends on how you define smaller.

Commissioner Jerrel: Yeah.

Joe Ream: There is 40 acres here totally. I really don't remember how much this is, but let's just say it's six and a half or seven acres. If we broke this up into say like eight lots we would agree to that which would still be big lots.

Commissioner Jerrel: Yeah.

Joe Ream: You know, it could happen that we, you know, who knows? This might change a little. In other words, if we only divide it up into four lots somehow we wouldn't want to put it through because it would ruin our plan. We want to cooperate. We want good traffic. It's hard to...I don't have a crystal ball.

President Mourdock: Yeah, and I'll be the first to say that you've done that in the past when you have come in here and said you were going to do something that's the way you've always done it and I appreciate that. I want...I feel like my goal here too is just to have smooth traffic flow. Logic says to me the smoothest traffic flow is if Kimber Lane comes all the way up straight through here, but even if it does then traffic here is going to be forced one way or the other. Correct?

Joe Ream: Right.

President Mourdock: So the question really becomes are you going to have the bend here if, in fact, this were ever buildable, which apparently it isn't. Okay.

Joe Ream: The other thing is Metro is about right here and it

does go all the way through.

President Mourdock: I guess my first choice if I could dictate what you're customers want--

Barbara Cunningham: Here's Metro.

President Mourdock: --which obviously I can't--

Barbara Cunningham: Here's Royal. Here's Metro and it does go all the way up. Here would be Kimber.

Joe Ream: Metro would be here and take a little jog and go up here.

President Mourdock: Any questions, Pat?

Commissioner Tuley: No, I'm still...there is dedicated right-of-way along the ditch from the previous owners.

Joe Ream: Yes.

Commissioner Tuley: The plan had asked for basically this dedication--

Joe Ream: Wait a minute, I stand corrected here.

Barbara Cunningham: No, not dedicated.

Joe Ream: It's not dedicated.

John Stoll: I was going to say, I thought there was a commitment to dedicate, but there was no dedicated right-of-way.

Barbara Cunningham: It's a commitment.

Commissioner Tuley: A commitment, okay. Dedicate is the wrong word, but there was a commitment of that land for building of it and in essence so was right in the ditch?

John Stoll: Right.

Commissioner Tuley: Okay, so we don't want to do that anyway. The plan calls, if I look at this dotted line, would like for it to go through the property which does not work for you unless you get about eight or nine lots in.

Joe Ream: Right.

Commissioner Tuley: So, if I understood correctly, what you would like to do is extend Tutor Lane in lieu of extension of Kimber Lane.

Joe Ream: Right, exactly.

President Mourdock: He's already committed to the Tutor Lane extension.

Joe Ream: Right, we've turned our plans in and that's what we

would like to do because we think it makes the most sense for everybody.

Commissioner Tuley: Okay.

President Mourdock: Let me emphasize the one part of Pat's statement which was a little bit of a question. If, in fact, you end up going to smaller lots, then you would see it in your best interest to extend Kimber Lane in the north direction?

Commissioner Tuley: There would be two of them?

Joe Ream: There's two lots there now. If we broke it up--

Commissioner Tuley: Two roads I'm saying. If, in fact, tonight you walked out of here thinking I'm going to build Tutor Lane, okay, and I'm not going to do Kimber. Then if it got subdivided into eight lots because you didn't have a big user, then you would come back and build Kimber as well?

Joe Ream: That's what I am saying.

President Mourdock: Any other questions or comments? I need a motion then.

Commissioner Jerrel: Well, I don't know. I'm the last one that ought to be making these motions because I'm the least familiar, but--

Commissioner Tuley: I don't want to get into a legal bind with a motion either!

Commissioner Jerrel: Well, I think--

Commissioner Tuley: Joe, make a motion!

Commissioner Jerrel: Are you getting ready to say something? Oh, okay. Well, correct me if this motion is inaccurate. I would move approval of this zoning request and the removal of the original commitment for Stockfleth Ditch/Kimber Lane development with the understanding that Kimber Lane will, in fact, continue northward if these Lots 9 and 10 are subdivided into smaller sections. If not, then Kimber Lane will not cut through and Tutor Road will be the access road. Now is that essentially--

Commissioner Tuley: For somebody that was not supposed to do it you did a pretty good job!

Joe Harrison, Jr.: He may want a number.

Commissioner Jerrel: Well, I was going to say further subdivided, but that's not a very--

Joe Ream: Can we say nine? Pat said eight or nine.

Commissioner Jerrel: Alright.

Joe Ream: You know, we're going to do it if it makes sense. I



mean, that's all I can really say to you.

Commissioner Jerrel: Well, Barbara, do you feel comfortable with subdivided into nine lots?

Barbara Cunningham: Oh, I think that's fine. My only thing, I like this that you're making another commitment, however, I think you are supposed to act on it as it came from Plan Commission and you can't--

Commissioner Jerrel: You can't make a commitment?

Barbara Cunningham: He can make a private commitment with you or something like that, but if you want to do it...isn't that right, Joe?

Joe Harrison, Jr.: Well, the only thing is that the Area Plan Commission said that we had to address...the Commissioners had to address that issue.

Barbara Cunningham: That's right. I mean, if you all can find a way to make this commitment--

Commissioner Jerrel: I like the motion and we were told to make the decision, so that's--

Commissioner Tuley: I like the motion with nine lots.

Commissioner Jerrel: I'll put the number nine in.

Commissioner Tuley: How's that?

Barbara Cunningham: We've got it on the record the reasoning behind it.

Commissioner Jerrel: Right.

Commissioner Tuley: I'll second the motion.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I will vote yes, so the petition is approved.

Joe Ream: Thanks.

President Mourdock: Thank you. Any other items to come before us this evening? I would look for a motion for adjournment.

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**Vanderburgh County  
Rezoning Meeting  
July 21, 1997**

**Page 15**

The meeting was adjourned at 7:41 p.m.

***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene Timmons  
Barbara Cunningham  
John Stoll  
Joe Ream  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
August 18, 1997**

President Mourdock called the August 18, 1997 Rezoning Meeting to order at 7:02 p.m. The following introductions were made: Barbara Cunningham, from Area Plan Commission; Joe Harrison, Jr., County Attorney; Pat Tuley, County Commissioner; Bettye Lou Jerrel, County Commissioner; and Charlene Timmons, Recording Secretary.

President Mourdock: We have two issues or two items on our agenda this evening, two rezonings to deal with. The ground rules, if you will, for this meeting are very simple. First of all, all of our notes are kept verbatim. Charlene dutifully goes through hours of tapes and types every word. So with that I ask you to do two things because of that. Number one, if you are going to speak you must come to the microphone and state your name and address. That's rule number one. Rule number two is while we are simply lowly elected officials, we don't have to hear the same information over and over and over to understand it. If you wish to speak about traffic flow and someone walks to the microphone just before you and talks about the issue you were going to speak to we don't need to hear it over and over again. Please give us a little consideration on that one. We want to hear your issue; we want to hear your concern. We don't have to have the same ones over and over and over again.

**Approval of minutes**

President Mourdock: Having said all that, the first item of business on our agenda in our packets this evening we have the approval of minutes from our past meeting of July 21, 1997.

Commissioner Jerrel: I would like to approve the minutes of that meeting.

Commissioner Tuley: Second.

President Mourdock: So ordered.

**VC-11-97**

**Petitioner: John E. Wimberg**

**First reading**

President Mourdock: The first item on our agenda as far a zoning issue is on first reading tonight we have VC-11-97. The petitioner is John Wimberg. The address is 1730 Orchard Road requesting a change from AG to R-2. Barbara, do you have any comments on this one on first reading?

Barbara Cunningham: No.

President Mourdock: I would look for a motion of approval on first reading.

Commissioner Jerrel: I'll move approval on first reading.

Commissioner Tuley: Second.

President Mourdock: We need a roll call vote since we're dealing

here with an ordinance. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes.

<b>VC-6-97</b>	<b>Petitioner: MIB Developers, Inc.</b>	<b>Final reading</b>
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President Mourdock: The final reading then this evening, we have VC-6-97. The petitioner is MIB Developers, Inc. The address of the property in question is 3911 Oak Hill Road. They're requesting a change from R-1 to C-4 and C-1 and they have also presented in your packet a Use and Development Commitment. With that, I'll turn it over to Barbara Cunningham and also remind all of you who are here that will be speaking, we ask you to be sworn in. This is testimony, so in a moment then we'll have the County Attorney issue the oath to those of you who wish to speak.

Joe Harrison, Jr.: I'll go first. All those intend to make any statements or comments with respect to the rezoning petition before the Board please raise your right hands and stand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Response: We do.

Joe Harrison, Jr.: Thank you.

Barbara Cunningham: Mike Mitchell is the representative for MIB Developer, Inc. in this request to rezone their property located at 3911 Oak Hill Road from R-1 to C-1 and C-4 with a Use and Development Commitment. This petition seeks to rezone 7.09 acres from R-1 to C-4 and C-1 for a seven lot commercial subdivision at the Lynch/Oak Hill intersection. The petition was heard at the August 6th Area Plan Commission Hearing and received a no action vote. Five yes votes and two no votes. MIB originally filed two separate rezoning petitions and a subdivision. One petition to rezone the seven plus acres to C-4 at the northeast corner of Oak Hill Road and the new Lynch Road extension for this proposed seven lot commercial subdivision and a second petition to rezone 25 plus acres adjacent east of the proposed C-4 for development as an apartment complex. At the May Area Plan Commission meeting both rezoning petitions and the subdivision plat all received no action votes. The two rezoning petitions went forward to the County Commissioners where the residential petition was denied. The 25 plus acre petition was denied and this, the seven acre commercial petition, was referred back to Area Plan Commission to allow amendment of the petition by the petitioner. The amended petition includes three C-4 zoned lots along Lynch Road and four C-4...proposed C-4 zoned lots along Lynch Road and four proposed C-1 zoned lots along and adjacent to the south of the residential development. This petition was continued at a July meeting at the petitioner's request to allow amendment to include this Use and Development Commitment. The MIB subdivision has been continued

at the petitioner's request until next month's meeting. The Use and Development Commitment now included as part of the rezoning petition eliminates many of the uses that were referenced in public meetings as inappropriate. The proposed commercial development is planned along the north line of the new Lynch Road extension. Lynch Road will be a four lane limited access arterial with no driveway access permitted. The paving portion of this major road extension project should be completed this year. The petitioner proposes a new cul-de-sac street extending east from Oak Hill Road. All access to this site must be from this new street to be constructed north of the Lynch intersection. No access will be allowed on Oak Hill Road. Comments from the County Engineer, John Stoll, state that if Oak Hill Road should be widened in the future, the location of the new street could result in the need to construct a raised median on Oak Hill Road. I might also say that in your packet the EUTS remarks that were presented still speak to the apartment complex and that has been denied and that cannot be brought back for at least another year.

President Mourdock: Excuse me, Barbara, just to clarify something. You said there would not be access to Oak Hill Road?

Barbara Cunningham: Only the street access.

Commissioner Tuley: Street access only.

Barbara Cunningham: The street access, but there will be no cuts allowed from either of the properties or any of the properties. The proposed commercial...the future land use, the 2015 map of the 1996 Comprehensive Plan projects an area of commercial development at the Lynch Road/Oak Hill Road intersection. The commercial development proposed by MIB appeared to be consistent with the overall plans for the area. Any commercial uses adjacent to residential should incorporate quality site design and adequate buffers.

President Mourdock: Okay.

Mike Mitchell: Good evening. I'm Mike Mitchell. My office is at 522 Main Street here in Evansville, Indiana. Barbara has pretty well covered everything in the Staff Field Report. The proposed use for the C-1 designated property will be neighborhood type commercial and even though there was some probably objectionable type of uses within that we filed a Use and Development Commitment eliminating many of the C-1 uses and quite a few of the C-4 uses. You're all familiar with this area. In addition to the Use and Development Commitment Mr. Bauer, who is here with me tonight, and Mr. Morley, who is supposed to be here pretty soon I would think, entered into a declaration of covenants. We have covenants dealing with the C-1 property as well as covenants dealing with the C-4 property. In the C-1 we call for a privacy fence, indirect lighting...no lighting will be shined over into the benefitted property which are Lots 19 through 24 of Oak Hill Terrace. Outside speakers, if any, will be no more than 10 feet in height and no more than normal conversation, 60 decibels. The dumpsters, if there are any, will be completely enclosed. There will be no restaurants of any kind in this covenant on the C-1 property. Any on premise signs will be no higher than the structure itself. In

other words, there won't be any raised signs over there. Basically, the same thing on the C-4. Shielded lighting, indirect lighting. The speaker of 70 decibels over there and we said if there is a billboard there would only be one billboard and that is down on the Lynch Road side of the property. Now the traffic which I think will be one of the main areas of discussion tonight, and Barbara already told you in the EUTS statement they were saying so many curb cuts would be allowed, well, that's the old EUTS report and there will be no curb cuts onto Oak Hill Road. Now, the type of business. Because of the size of the lots themselves are not going to be big generators of a lot of traffic, they are going to be primarily for the neighborhood type stuff. We can't...you know, like if it is going to be bank...I don't even know if a bank can fit on one of those lots, but bookstores and beauty shops or whatever that might be, but there won't be any big retail stores because they can't fit on the lots. Now, one of the gentlemen, during the Area Plan Commission, was concerned. He lives in Oak Terrace over here and he said coming home one night coming down this hill there were people turning into this subdivision and he was waiting to turn into his subdivision and that there was some stalled traffic there. He felt like a sitting duck if somebody came around that curve. Mr. Morley pointed out at the meeting that part of the intersection plans for Lynch Road and for Oak Hill Road are going to put in a left turn lane, a third lane, coming down here where these people can be out of the traffic flow and turn left into their subdivision which would eliminate that. Plus, our property will have a decel lane, so that is two different types of protection on the traffic flow that should not cause any problems even on returning at home in the evenings. As Barbara told you, this area was within the Comprehensive Plan, the Use Plan, that has been adopted by the county and the city and therefore we comply with that. Also, the Plan Commission...this is a no action vote coming to you tonight, but the vote was five affirmative and two negative at the Plan Commission. Mr. Morley is supposed to be here to answer any technical questions. I have Mr. Bauer here and I am sure by the time the remonstrators...if I can spread a little of my time if Mr. Morley comes and there are any detailed questions that we could address those after the remonstrators. If you have any questions before they speak I will try to answer them.

President Mourdock: Questions from the Commissioners at this point?

Commissioner Tuley: Probably for Mr. Morley and our engineer to just verify about...where is John.

President Mourdock: John Stoll?

Mike Mitchell: Yeah, we're missing both of our engineers.

Commissioner Tuley: Okay. I just wanted to make sure about I think Mr. Mitchell made the statement that current plans, and I say current plans, so if I misquote you let me know, but there are plans to make a left turn lane for those people going into that...is it Oak Lynn? I'm going to guess that is the name of that.

Mike Mitchell: Whatever that one is past the--

Commissioner Tuley: Then the decel lanes. Now who is responsible for the construction of those?

Mike Mitchell: The decel lane will be on our property.

Commissioner Tuley: Okay. Is that in some of that area that is still showing as zoning R-1?

Mike Mitchell: Right. Yes, sir.

Commissioner Tuley: Okay, and then on that left turn lane is that the county's or is that part of the Lynch Road extension?

Mike Mitchell: That's part of the Lynch Road...that's in the total...the way Mr. Morley presented it at the Plan Commission that's part of the plans that have already been developed to finish off that intersection and bring it down.

Commissioner Tuley: Okay.

Mike Mitchell: We can get verification. Like I say, I'm not an engineer--

Commissioner Tuley: Sure.

Mike Mitchell: --but that is what Mr. Morley represented to the Plan Commission a couple of Wednesdays ago.

President Mourdock: Just to clarify one thing.

Mike Mitchell: Yes, sir.

President Mourdock: I think I just heard you answer this, but there is a conspicuous yellow strip that is still shown in the R-1 zoning immediately on the west side of what you--

Mike Mitchell: I noticed that too, right.

President Mourdock: That is what you're saying is dedicated for those?

Mike Mitchell: For the decel lanes for the traffic into it. That's my understanding. Again, we need Mr. Morley here to verify that with his plans. He's already drawn the plans.

Commissioner Jerrel: Have the people that are here, have they seen this?

Mike Mitchell: Yes, at the Plan Commission they know, yes, they know. They probably didn't know before that. I didn't know it myself.

Commissioner Jerrel: Well, I wondered. They're shaking their heads. They haven't seen it, so maybe if you turned it. I know your information was for us, but it would help if you gave it to them.

Mike Mitchell: What Mr. Morley was saying is part of this intersection to finish off Lynch Road there will be a third...there will be a turn lane into this subdivision here and



we will add a decel lane in the road and this is a cul-de-sac road here. There will be a decel lane here. I don't know how many cars, and maybe Jim can tell us, will be turning in and how many the decel lane will hold as they turn into it. Meanwhile (inaudible) there is going to be a left hand turn for these people here which wouldn't hold up the people who are trying to turn into here.

Unidentified: How about these people coming here, Mike, that are trying to get in and trying to get out?

President Mourdock: Excuse me, sir. Would you go to microphone.

Commissioner Jerrel: Could both of you come up here just a little bit so we can--

Mike Mitchell: Identify yourself.

President Mourdock: Yeah, state your name.

Jerry Bryan: I'm Jerry Bryan. I'm at 3514 Elmridge Drive. I had a question for them as far as coming into this new development. As you come in and now you come out how do you go south there without coming across the traffic is my question?

Mike Mitchell: Well, you would probably not go south if you are coming through early morning traffic and evening traffic. Just the regular daytime traffic. It's probably going to be a right in/right out most of the time. Oh, here's Mr. Morley. Here's our expert.

Jim Morley: I think the answer to that, and with John Stoll we talked about earlier, was that there may be a median in place if there is a problem with left turns and there would be no such thing. If a problem develops there will be no such thing as left in and left out. There will be a median to stop it just as there is on Green River Road along Washington Square. At the beginning as you have the new left turn lane that this project enables to you do to widen it out, it may actually make the situation better there with the extra room, but in the long run if a problem develops the problem is solvable; the barrier is just erected. It's just that simple and it's totally under the county's direction as to when that occurs.

Mike Mitchell: You want to give your name.

Jim Morley: I'm sorry, I'm Jim Morley.

Mike Mitchell: Mr. Mourdock pointed out this yellow is still R-1 here that's on our property?

Jim Morley: Well, it really isn't our property anymore. That is the new right-of-way acquisition lines along this area.

President Mourdock: That was my question. That's already been dedicated?

Jim Morley: It has already passed from Bauer's ownership to the county's ownership. That's the new property line. There is

not...it's not a side strip or anything left. It's just not within his power to do anything with.

Mike Mitchell: The decel lane will be inside of that?

Jim Morley: The decel lane is essentially right along that property line. It's been widened.

Commissioner Jerrel: While you've got that up there, because some of the people had questions, maybe if there is any other question they can look at the map. It's really for their information as much as for ours.

President Mourdock: Okay, we've heard from the developer and I know there were a number of you who stood to be sworn in a few minutes ago and we're certainly willing to hear what you have to say at this point. Again, state your name and address when you come to the mike, please.

Jerry Byran: I'm Jerry Bryan, a resident of 3514 Elmridge Drive. I'm a 17 year resident of Oak Terrace 2 and since 1980 we have had steady growth in the homes and traffic on Oak Hill Road. Starting from Oak Terrace 1 to Oak Terrace 2 in the '80's, Bob Romains' Subdivision now Oak Lynn Park, now Keystone in the '90's and all this growth has put a strain on Oak Hill and Lynch Road. There is 10,000 cars on Oak Hill and projected 30,000 to 40,000 on Lynch Road in the year 2005. Mr. Bauer wants to rezone this from residential to commercial and I am opposed to this rezoning. After hearing Mike Mitchell talk about this traffic problem there is still a problem as far as getting the traffic in and out of this proposed development. I quote from the Subdivision Field Report of April 23, 1997 from the County Engineer expressing concern about the distance from the MIB and Lynch Road intersection on Oak Hill which would make left turns difficult and this may or may not be solved. I don't know. At the Area Plan Commission on May 7th Don Bowser called this rezoning, this commercial rezoning in the middle of a residential area, a cancer in the area. He said don't put a cancer in this area and make these homes which will go down in value with this commercialization. Adding to the burden of commercial traffic, bumper-to-bumper in the mornings, and Del Schiavone who will speak next has some pictures there of the traffic backup in the morning between Whirlpool, TJ Maxx and school buses at 7:00 and 8:00 in the morning and also in the afternoon and these will cause a lot of problems with people getting in and out of their streets. For that I urge you to vote no on this development. Thank you.

President Mourdock: Thank you, Mr. Bryan.

Del Schiavone: My name is Del Schiavone. My family and I reside at 3211 Elmridge Drive. As Jerry mentioned, I have some pictures that my daughter took last Wednesday morning, the first day of school here in Vanderburgh County. It does show the traffic backing up on Oak Hill Road. There is a very nice picture of my backyard, too, in case you would like to see that. She has got the traffic to the end of the street. This shows (inaudible comments made away from mike). I'm here tonight with a group of my neighbors to voice our opposition to the proposed rezoning at Oak Hill and Lynch Roads. We've been totally

against this proposal since the first day that we became aware of its existence. We have appeared as a group at all meetings. We have remonstrated against the proposal. The Area Plan Commission was told on August 6th that this development is being proposed for our benefit. How can that possibly be if we are totally opposed to it? Just a short drive from our neighborhood brings us to everything from grocery stores, drug stores, appliance and convenience stores, gas stations, a bank as well as many eating establishments. We don't need more commercial development especially along a residential corridor which has no commercial development east of its right-of-way. We are told that a covenant that is drawn up between a developer and a neighborhood cannot be enforced by the Plan Commission or the County Commissioners, yet we are asked to put our trust in a person who has changed the original covenants that were worked out in May at a neighborhood meeting. The changes that are made are not to benefit the homeowners, they are to benefit the developer. We have been told that we do not need to sign these covenants. In fact, most of the neighbors have not even seen them. Members of the Area Plan Commission were given copies of the covenant on August 6th. We're being asked to put our trust in something that we do not necessarily agree with. That's the fact that these covenants will guarantee the quality of life in our homes and in our neighborhood. I don't think that's true. We're also being asked to trust a person who has made the following statements to various neighbors since May. Statement number one is, if you have trouble getting out of your driveway due to increased traffic just extend the driveway through your backyard and exit onto Elmridge Drive. The problem there is cost and the fact at times you cannot get out of Elmridge Drive onto Oak Hill Road because of traffic. Statement number two, I have too much invested in this property, you can't stop me. I'm tired of providing you people with extended backyards. The last one, I'm really not too concerned about the residents of the neighborhood because these homes are not that expensive. They are old and probably most of the systems in them don't work right anyway. This property is presently zoned residential. Build houses on it. There is enough commercial property in and around Evansville that is for sale, it's for lease or it's for rent. We do not need more. The future plan that was mentioned earlier for the year 2015 suggests that the area in question may be commercial. It does not say that it will be. It does not say that it must be. The study done by the County Engineer for this proposal recommends that extended setbacks and buffers, due to the proximity of the development to residential property, should be established. Has this been done? Not to my knowledge. The present proposal calls for absolute minimums in these areas. As I mentioned, I brought a group of the neighbors here tonight to show their support. I would ask them to take just a second and stand, please. I ask you, if you continue to put commercial developments next to residential neighbors where are the people of Vanderburgh County to move if they want a quiet residential place to live? We thank you for your consideration and thought concerning this very important matter. Thank you.

President Mourdock: Thank you.

David Stachowski: My name is David Stachowski. I live at 3030 Nicole Drive, which is Oak Lynn Subdivision. I have with me

petitions that I generated on my home computer dated July 13, 1997 that I made after the first Planning Commission when it was postponed until this date. There are approximately...I'll be fair, there are approximately 50 houses in that subdivision right now including the Elmridge Street, Nicole Drive, Jenny's Place and Clover. In my hand I do have 11 petitions stating we do not want this rezoned. Again, I must be fair and tell you that is 11 out of the full bunch, but that's not saying the ones that didn't turn it in weren't opposed to it, but I would like to present these to you also in opposition of the rezoning.

President Mourdock: Others wishing to speak opposed to the petition? Okay. Questions of the Commission?

Commissioner Tuley: Basically, I think I would like to ask if the petitioners have any response to some of the comments that were made. I don't want to start a free-for-all here.

President Mourdock: Well, let me be specific. There were a couple of questions, a couple of statements. One was that changes were made to the betterment of the neighbors...I'm sorry, changes were not made to the betterment of the neighbors, but the developer and also the statement which was alleged to the developer said that way, I presume it was meant Mr. Bauer, that he had too much invested or whatever.

Mike Mitchell: I'll have Mr. Bauer respond to that and then I would like to respond.

Al Bauer: I'm Al Bauer. I live at 7835 East Oak. I think some of these points have been stretched beyond imagination. I feel at this time that Lynch Road is on its way. It will be completely built, I presume, by the end of the year. If you refer to a seven lot commercial subdivision which has to be very small home use type of uses for the people who go all the way out to McCutchanville and spread out in each direction like Melody Hills and all those places, it would be, I think, a great help to them, a lot of these people, because we are not planning anything very big. I would say the biggest thing that will be there would be possibly a service station on that one corner and from then on it would all be small businesses. It will be businesses that will not have anything setting on the outside like inventory, repairs or anything along that line. As far as the...I have had this a long while and I think who said that, I don't run down anybody's houses because I have been in the building game a long time, but if we would build houses there you would automatically have about 150 to 160 units with an average of two cars each. I would say that would be a real buildup of traffic. You know houses are built pretty fast and commercial don't go that fast. We don't have anything moving on accept for maybe one lot at the present time.

Commissioner Jerrel: I have a question.

Mike Mitchell: Did he answer that specifically what Mr. Schiavone...you said you didn't run down houses?

Al Bauer: No.

Mike Mitchell: Mr. Schiavone also said that you said you...I

forgot what they said. There were three comments. I would like to have Mr. Bauer respond to each one of those, please. Take them one at a time.

Del Schiavone: There's the first one. You talked to Bill Wilcox, my next door neighbor.

Al Bauer: Oh, I talked to Bill Wilcox.

Del Schiavone: I understand that.

Al Bauer: I said he wasn't completely locked in. I told him I would repair his place so he could get a full car length visual out of that driveway. Out of his driveway.

Del Schiavone: I understand that.

President Mourdock: Mr. Schiavone, let's keep this in context and make it fair. If you would, just read the question that you quoted Mr. Bauer from before and then Mr. Bauer, if you would, you just respond to that question. That would be the fairest way.

Del Schiavone: You want to just go down the list here?

President Mourdock: Yeah, the way you read them.

Mike Mitchell: Is Mr. Wilcox here?

Del Schiavone: Yes, he is. The first one states, if you have trouble getting out of your driveway due to increased traffic, extend the driveway through your yard and exit onto Elmridge Drive. Mr. Wilcox's address is 4101 Oak Hill Road. It comes out directly across from the...I'll show you. This is his house right there.

President Mourdock: Okay, alright.

Del Schiavone: His driveway comes out directly across from where Elmridge has been extended into the new subdivision.

President Mourdock: Okay, thanks for clarifying that one. Okay, Mr. Bauer, do you wish to respond to that?

Al Bauer: Yes. I asked Mr. Wilcox what kind of length do you have with your lot? I could see how the situation that he had right then at the present time and it wasn't too good coming off of Oak Hill Road and turning around and heading them out to face Oak Hill when you go out. I asked him, I said, how much rear yard do you have. Well, it turned out that he had about, I'd say, 175 feet along Elmridge. I said, actually, you know, it would be kind of costly, but you could have...you could use a drive back there if you had to and if you wanted to, but I didn't make any slams otherwise. I am trying to help Mr. Wilcox in any way I could to keep his present drive. I told him I would cut out all the trees and everything, slope the bank up there in the front to make him an entrance that he would have more visual than he has had in ten years. As far as the cost of those houses--

Mike Mitchell: Let's just take them one at a time.

Al Bauer: Okay.

Mike Mitchell: Okay, read the second one, Mr. Schiavone.

Del Schiavone: The second one is, I have too much invested in this property, you can't stop me.

Al Bauer: I did not say I had too much. I have money invested in this and I am not in the game to just buy land because I have been a developer for many years and as far as having too much in it actually land is expensive and so I don't say that I've got more money that I have nothing to do with. I'm just trying to proceed in the business that I am and do it honestly and we've never run into any problems with city administration or the county for anything period. If there has been anything to turn up later we have always gone back.

Mike Mitchell: Number three.

Del Schiavone: Number three says, I'm tired of providing you people with extended backyards. I can tell you that a number of the neighbors in that area--

Al Bauer: Hey, I--

Mike Mitchell: Let Mr. Schiavone finish.

Al Bauer: Okay.

Del Schiavone: --cut the grass in the median. It's not the median, that's what is called right-of-way, utility right-of-way and beyond that is just a grass field. We just maintain the property so it doesn't look that bad against the back of our yards.

Al Bauer: Okay, in regard to the backyard. Their backyard where their grass is I did not say I was tired of providing anything. I prefer if they want more backyard and they want to extend over another 50 or 100 feet it's okay with me, but we, in turn, mow that whole site up there at least twice a year. As far as them extending their backyards, they've extended an awful lot when they have trees and limbs blow down. They've extended those off of their yard onto my yard, but I have no problem with that because it's not a big item and it can be moved. So there is no problem with them using that land. I have never said to anybody that you can't have that ground to do as you want to as far as mowing and keeping it the way you want to.

Del Schiavone: Okay, the last one says, I'm really not too concerned about the residents of the neighborhood because these homes are not that expensive. They're old and probably most of the systems in them don't work right anyway.

Al Bauer: No, I did not say they don't work right. How do I know whether the systems don't work right? I think most of those houses are probably maybe 20 to 35 years old. They were nice houses when they were put up and I would not say that about anybody's house because I respect the people that are living in

an average neighborhood. I used to live in this neighborhood myself, just about one quarter of a mile out. I would not make that kind of statement in front of people that I wanted to work with from this point on because the balance of this subdivision will be residential beyond this little seven lots.

President Mourdock: Okay, thank you. Mr. Mitchell?

Mike Mitchell: I would like to respond to this one other thing that I think you really have to key in on which Mr. Bauer brought up and Mr. Morley. We can run figures, you can talk to John Stoll or anything else, but if the property was developed R-1 maximum use with two cars for each unit not only would that generate more traffic than a small commercial subdivision, it would generate that traffic at the worst time when these people are having the most problems. That's early morning rush and coming home rush. This, as far as traffic is concerned, as opposed to what kind of development goes in there, this type of development would cause a lot less trouble in the traffic flow especially at the peak times that these people are experiencing at this time. Are there any other specific questions that you had, Mr. Tuley?

Commissioner Tuley: There was a comment about in a neighborhood meeting there were some covenants discussed and apparently the comment was made that they've been changed or something.

Mike Mitchell: Well, they've been changed because we divided...we had it all C-4. I think Mr. Schiavone has had all copies from the beginning. Didn't Mr. Bauer hand you another set?

Del Schiavone: Right, I have a copy of that.

Mike Mitchell: You're saying that is different from the first set?

Del Schiavone: What I said is the neighbors haven't seen it.

Mike Mitchell: You're the leader of the neighborhood. Is that our fault?

Del Schiavone: My comment was on August 6th you handed them out to the Plan Commission.

Mike Mitchell: That's because no one was going to sign them and we put them into the public domain instead of private with you all. It's the same thing.

Del Schiavone: We had no input--

President Mourdock: Mr. Schiavone, you need to go back to the microphone if you are going to speak.

Del Schiavone: We had no input as to any of the changes that were made in the covenant. We were just told this is the way they are going to be. You don't need to sign them and that's it. We were not asked as a neighborhood if we had any input. We did that at the first meeting in May at my house. We met with the neighborhood and Mr. Bauer and Mr. Morley and worked

out the original covenants. Since that time we have not been asked as a neighborhood about any of the changes. Some of them are very minor. One is very major as far as we're concerned.

Commissioner Jerrel: Do you have the covenants? Who has them?

Del Schiavone: Do you have a copy of the covenants?

Mike Mitchell: Yeah.

Del Schiavone: I don't. They need them.

Commissioner Tuley: I have a copy.

Joe Harrison, Jr.: They're in there.

Barbara Cunningham: They're in your packet.

Joe Harrison, Jr.: The commitment runs in favor of the Plan Commission.

Mike Mitchell: No, not the Use and Development. They're talking about the Declaration.

Joe Harrison, Jr.: Oh, I'm sorry. I thought you meant the Use and Development.

Mike Mitchell: The Plan Commission has them, I think I dropped them off.

Commissioner Jerrel: What I am concerned about and...you've got them, have you showed them to anyone else?

Del Schiavone: I don't know if we got the last set.

Mike Mitchell: You don't have the set where no one signs but Mr. Bauer, that's correct.

Del Schiavone: He brought a set by and then took some pages off the back where somebody was supposed to sign them or something. He said, you don't need to sign these. Okay? Mr. Bauer brought a set by the house and tore some papers off the back and said you don't need these pages. It has C-4 and C-1, I'll grant you that. It had two different things on there and I called and asked him about a couple of things on there because one, as you said, on one for the C-4 it says the decibels can be 70 decibels and on C-1 it says 60 and I asked why the difference? Why that had been change. We talked about the fence because that has been bantered back and forth. Originally the fence was going to be constructed if this project started when the first shovel of dirt was built and then it was changed to once the project was developed when they started work on the north part, the C-1 against our backyards, then they were going to put the fence up. Prior to the Plan Commission I called Mr. Bauer and asked him again. I said, now, I want to get this final straight so I can talk to the neighbors about the fence. When are you going to put it up? He said, when the first shovel full of dirt is turned. Now that's not in the covenant. It doesn't say that.



Mike Mitchell: Yes, it is. Said fence shall be installed prior to any site work on C-1--

Del Schiavone: Okay, C-1, but that's not what I am saying. I'm saying he said originally that it would be put up as soon as any work was done on the property, C-4 or C-1, either one of them. Okay? I understand that.

Mike Mitchell: That was put in there to protect you all.

Del Schiavone: Yes, I know that. I'm just saying originally it was at the first.

Mike Mitchell: We can come back and change this.

Del Schiavone: The last thing was concerning a billboard because you can ask any of these people right here if they want a billboard in their backyard and they'll tell you no. You can ask them here if they had a choice between residential homes or commercial and they would choose residential.

President Mourdock: I'm confused by that point, if you don't mind. Last month or several months ago when this was here, with the proposed rezoning at that time that was for the apartment complexes back further east there were a number of comments, and I was just looking at my notes here, you commented about this as well at that meeting, about the amount of traffic that would be coming out of those apartments--

Del Schiavone: Right.

President Mourdock: --and across this property. Now, even with residential, there would be more traffic than what this would seem to be offering just because you've got people coming in and out. So you were against last time the apartment use because of traffic and now I am hearing you say you favor the traffic...or, I'm sorry, you favor the residential?

Del Schiavone: We would rather see houses built to maintain the...what do I want to say? To maintain the neighbor and our property values in that area.

President Mourdock: So the traffic issue, was it not a point last time or is it really not a point this time?

Del Schiavone: It still is a point, but you asked us earlier not to keep saying the same thing over and over again. The last time my whole thing was about traffic, okay?

President Mourdock: That's what I recall.

Del Schiavone: Our major concern still is traffic. We're talking about in a couple of years 40,000 cars at that intersection going every which direction and here you have an access to Oak Hill Road what I consider dangerously close to that intersection. The number of cars we have no way of knowing. If it is a commercial development. How many cars are going to go in and out of there? There is no way of knowing that. If there is 160 homes built in there and two cars per home you're looking at 320 cars. They just mentioned that

number. I would have no idea, okay? If you're going to put all the apartment complexes down there we're looking at 300 or 400 cars in that 25 acres. That's what I was talking about in May. You're looking at 300 or 400 cars in an apartment complex plus the commercial on top of it. So there is a way to limit the number somehow.

Commissioner Jerrel: This is just a comment or two that has been made to me by people who have called me that they view that other corner has commercial development and they knew this corner was going to have commercial development. They didn't want all those apartments built or small houses built back there. Now I'm just telling exactly what was said to me. If they had their choice, they know something is going in, that's the way it was presented to me. They didn't want all those apartments and smaller homes built. They know something is going on that corner.

Del Schiavone: Okay, the people that were here in May that live further down Elmridge Drive were very much against the apartment complex because it was down in their backyard. It's further east down Elmridge Drive. Those of us who live close to Oak Hill Road, our concern has got to be no matter what goes in there we're looking at a lot of traffic. I was told today that the proposed intersection is going to have a left-hand turn lane that will be tapered as it goes north. The intersection will be tapered as it goes north. There are two houses there right at Elmridge Drive on both sides. Mr. Wilcox on the east and Mr. Brown on the west. If you put a raised median in there people going north out Oak Hill cannot turn left to get into Elmridge Drive and Oak Lynn Subdivision if there is a raised median. I'm the one at the Plan Commission that said I was a sitting duck on that curve because I came around the corner on my way home, through the light and there were eight cars backed up starting from right here. I was sitting about right here. Traffic coming around that curve was not going 30 miles per hour despite what the speed limits says. When a car goes around here right now they have no place to go but in a ditch. Okay? Will a deceleration lane help that? I have no idea. Especially if there is traffic trying to get out of that proposed subdivision at the same time somebody is in trouble and trying to get away from running into somebody's car. I teach driver's education. I try to look at things like that. That's a dangerous curve. You're in a very busy intersection. You're going to have traffic going north going around that curve and then trying to slow down to get into a deceleration lane to make a turn. People coming behind them are not going to be looking for that. If somebody comes up towards that intersection with a right turn signal on most people are going to think that they are going to turn down Lynch Road when it's extended. They're not going to think about the fact that 300 feet past that there is another roadway for them to go into. It's a very dangerous situation traffic-wise.

Commissioner Tuley: I have another question for the developer and a question for Ms. Cunningham, too. On the original back several months ago on the section that now says R-1 to C-1, was that the way it was presented originally or was it--

Mike Mitchell: It was all C-4, Mr. Tuley.

Commissioner Tuley: It was all C-4?

Mike Mitchell: Yes, sir. Can I give you just a quick history on that? What Mr. Schiavone was talking about was the original covenants also when they got their extension on this the original covenants also had all of the prohibited uses in the C-4. You know, there are pages of them. I don't know what we are referring to. That's when Ms. Cunningham advised us it would be a lot better that they could enforce if we did a Section 4, so we split that out from the original group that met. We took the exact same uses that were in that original covenant and put them in the Use and Development Commitment. Then we took the rest of it that was in C-4 and then we broke it down because C-1 has a lot of them so we put the privacy fence in and we did all these other things to try and stay in the same theme and scope and promises that were made. I find it curious that, you know, I tell Mr. Bauer to go out and share this with the spokesperson, the leader, and Mr. Schiavone, who is an educator, gets this and he doesn't do anything about it. If he had called me or he had some concerns or called Mr. Bauer back, this is the first that he has said anything. He didn't even say this at the Plan Commission.

Commissioner Jerrel: Mr. Mitchell, what you are holding--

Mike Mitchell: That's what Mr. Tuley has.

Commissioner Jerrel: Yeah, pass that down here a minute.

Commissioner Tuley: I'm sorry.

Commissioner Jerrel: I know Ms. Cunningham said, you know, we don't have any control over these things.

Mike Mitchell: That's why we put them in the private.

Commissioner Jerrel: I've got the time if you've got the time. I would like for you to describe these verbally right now so these people in this room know them.

Mike Mitchell: Sure. As to the C-1,

"Setback Lines. No primary building shall be erected or maintained on the real estate within 20 feet of the north property line of the abutting lots of Oak Hill Terrace as platted."

Again, maybe I am trying to take the theme out of it and protect the C-1 abutting neighbors and that is why, as Mr. Schiavone picked up on, that it is only when we start developing the C-1 side that we put the fence up before anything is done.

"Privacy Fence. Developer or successor owners shall erect and maintain a treated solid wood type privacy fence on the north property line between the C-1 real estate and Lots 19, 20, 22, 23 and 24 of Oak Hill Terrace. The fence shall be six feet in height with no access openings and shall be kept in a reasonable straight line and in good repair by the adjacent commercial owner. The fence shall consist of 5/4 x 6

(which is supposed to be a real solid) inch wide solid wooden planks and posts all treated with flushed smooth side of the fence facing north toward the benefited property."

That's so that they don't see the posts or anything. I've been in this before and we try...we've got to get down to exactly...almost take a picture of the fence that is not there yet.

"The fence shall be installed prior to any site work on the C-1 real estate. The duty to maintain the fence in good repair shall be binding on the developer and all future owners of the C-1 real estate."

Lighting. All exterior light fixtures on the C-1 real estate shall be shielded to prevent direct light rays from shining into the yards of Lots 19 through 24 of Oak Hill Terrace.

Outside speakers. Any outside speakers on the C-1 real estate shall be mounted no higher than 10 feet and shall be limited to conversation, not music, and shall not be louder than normal conversations (60 decibels)."

That's the rating for banks. When you pull in a drive in and that's the reason in case a bank would ever go in there that is what that is based on.

"Dumpsters. All dumpsters on the C-1 real estate shall be closed on all four sides with a privacy wall or privacy fence and gate. All dumpsters shall have lids that are kept closed at all times when not being filled.

Restaurants. There shall be no restaurant building located on the C-1 real estate. Any restaurant building shall be located on the C-4.

Billboards. Off premises advertising signs are prohibited on the C-1 real estate.

On Premise Signs. Any on premise sign that is higher than the building on the C-1 real estate shall be oriented with sign face east/west to minimize visibility from lots."

In other words, they would be looking at the end of any on premise sign. That's the C-1 restrictions. We broke it down then into the C-4. The lighting is the same exact paragraph, shielded lighting. Outside speakers we have raised it 70 decibels because it is about 500 feet away. The billboard, which seems to be, I guess, a controversy with them, there will be one billboard allotted on the C-4 which is somewhere down in here right along Lynch. That's the only way it would be effective is to be on Lynch Road. The rest of the document goes to this agreement:

"This shall be amended only with the written consent of a majority of the owners of the benefitted property

and the developer."

The teeth of it, 4.1:

"Right of Enforcement."

President Mourdock: Excuse me, Mr. Mitchell, if I may?

Mike Mitchell: Yes, sir.

President Mourdock: How can it be amended? Say that again?

Mike Mitchell: This declaration shall be amended only with the written consent of the majority of the owners of the benefited property, that's those five lots, and the developer.

President Mourdock: Okay, thank you.

Mike Mitchell: Okay,

"Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this declaration shall be grounds for an action by the Developer, owners of the benefited property and any and all persons or entities claiming under them, against the person or entity violating or threatening to violate such covenants, conditions or restrictions."

That includes the developer, although the developer may have a cause of action against one of the lot owners.

"Available relief in any such action shall include the recovery of damages or sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and reasonable attorney's fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that the developer shall not be liable for damages of any kind to any person for the failure of any other party to enforce or carry out any such covenants or restrictions."

In other words, if the neighbors don't want to carry it out they can't point to him they've got to point...now if the developer is the person who is obviously committing the violations then he is the defendant. Delay or Failure, I put that in there in case somebody doesn't see it right away that doesn't constitute a waiver. They can jump in at any time. Successors and assigns, this runs with the land, so it will be recorded along with a cross reference. Let me make this clear, too, and we didn't bring this up because it is kind of jumping the gun, but if this would pass the plat, the subdivision and commercial plat, will also have a reference, site reference, to the recorded declaration here which would be on the face of the plat. So you're going to have it cross indexed twice. Counterparts. I didn't take that...see, that shows you how much I was following the original one. Counterparts means if I hand you a document, Mr. Tuley, and all three of you have to sign it, but Mr.

Mourdock and Ms. Jerrel are not there you can go ahead and sign yours. We'll get it notarized and I give Ms. Jerrel a different...the same one, but she signs on hers and Mr. Mourdock signs and we've got three signed documents constituting one. Well, that's the way this was set up originally when we were trying to get the neighbors, if they would agree to sign it, that they didn't all have to meet at one place and get a notary and all that. I should of taken that out, but that's what counterparts mean. That was even left in from the original. Severability, meaning if there is anything in here that is not legal, then it doesn't bother the rest of it. It doesn't defeat the whole agreement. Titles, that's the captions, and it means for reference only. Applicable law, it will be enforced under the laws of the State of Indiana. The exhibits are we separated out the C-1, C-4 and then identified the five lots of the benefited properties.

Commissioner Jerrel: Okay, I have one other question. On this original prohibited list, is that part of this entire...?

Barbara Cunningham: Are you talking about the Use and Development Commitment? That's different. That's enforceable by Plan Commission. If somebody comes in to get a permit we will check this out. You know, we will check to make sure that the use if the use is not allowed that the use will not go in there.

Commissioner Jerrel: In other words, if somebody wants to build a group home or--

Mike Mitchell: Liquor Store.

Commissioner Jerrel: It couldn't go in there.

Barbara Cunningham: That's right. To change any of this it would have to come back through the same process that we're going through tonight. It would have to go back to the Plan Commission and go back to the County Commissioners.

Commissioner Jerrel: Have the residents here heard these?

Mike Mitchell: That was part of the original that Mr. Schiavone was talking about. That was the original ones that were all excluded and they were all in one document and that's when we met with Ms. Cunningham. They have the original. Not in the form of the Use and Development, but they had it in their original covenant. Everything was in the covenant at one time and now it has been split out into the Use and Development Commitment and then what the APC isn't comfortable with or can't enforce we put into the covenants.

President Mourdock: Mr. Schiavone is one of those five residents, I believe you said?

Mike Mitchell: Yes, sir.

President Mourdock: Are there any of the other five residents--

Del Schiavone: Mr. Wilcox is here, the Schaefer's are here. (Inaudible) are on vacation.

President Mourdock: So three of the five.

Unidentified: I'm the one who is going to be hurt.

Commissioner Tuley: I had a question. Barbara, on parking restrictions or requirements or whatever on that C-1, how is that...is that determined by square footage of the--

Barbara Cunningham: It's determined by use and square footage. Like an office use would have one for every 200 square foot. It's determined by the use and I can't tell you what it would be now, but they would have to meet code requirements or they would have to seek the variance process and that too is a public meeting.

Commissioner Tuley: The reason for my question is on the C-1 in particular, which is the area closest to the homes, you've only got 3.15 acres and yet it is designed to be four lots. That's fairly small.

Mike Mitchell: That's our whole point. You can't put (inaudible) in there.

Barbara Cunningham: I must say that two lots could be put together.

Commissioner Tuley: Right.

Barbara Cunningham: That does not preclude that you cannot put two lots or you can't do a lot and a half and cross lot lines.

Commissioner Tuley: Right, those aren't etched in stone, as the saying goes.

Barbara Cunningham: Yeah. You could put an individual use on each lot also, but you would have to meet code requirements to furnish parking on that lot for the use.

David Stachowski: If they put a median dividing east and west in there I would think it is for the betterment of the whole area. How are we, as residents of Oak Lynn, supposed to access this whether it is residential or whether it's commercial? It's impossible.

Barbara Cunningham: I would think that the median, and I am not speaking for John Stoll, but I would think that the median would not go as far as to stop at the Oak Lynn. It would stop probably at the edge of this property. I mean, it would stop at this property. See, the drive would be right here--

David Stachowski: Right, I understand that.

Barbara Cunningham: That would be the only one.

David Stachowski: But that median would divide east/west up to this gentleman's home. Now whether, you know, this--

Barbara Cunningham: I'm not sure it would go all the way up to his home or all the way up to the entrance to your subdivision.

David Stachowski: Well, my point is whether rezoned R-1, C-1, C-4, number one, I've got a problem. It's a cul-de-sac. There is no other access road to this place, number one, which, you know, again is a traffic problem. Even if we were to take advantage of it, a beauty salon or whatever, how are we supposed to get into that area? Whose benefit is it for if he wants to develop this for all of McCutchanville and everybody else to come? If they're shooting down south there they can't make a left-hand turn. How are they supposed to get in there? There is no access road off...right now there is nothing coming off Lynch Road. I mean, that's just something to consider. I see it as being more of a traffic flow and keeping it more household, really.

Unidentified: May I make a comment?

President Mourdock: Yes, ma'am.

Unidentified: I haven't been sworn in. Can we do that anyway?

President Mourdock: Sure, after you're sworn in.

Joe Harrison, Jr.: Okay, ma'am, please raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Unidentified: Yes.

Joe Harrison, Jr.: Okay.

Patty Mendel: Patty Mendel, 3414 Oak Terrace. A couple of these things are questions to throw out for the common good, basically. The developer bought this property with the zoning that it has on it now, I assume. I assume it has not been rezoned until we're talking about doing it here and now. So, therefore, my basic question is what right does he have to give us an either/or situation? Well, it's not that bad. You're only going to have a few small commercial lots. It could be a lot worse. We could be putting residential and apartments in there, so, you know, I am doing you a favor this way. Well, he didn't buy it zoned for what he wanted to use it for, and I understand this goes on all the time. People speculate, purchase property, you know, hoping that they are going to be able to rezone and capitalize on that. Basically, why, you know, do we have to insist that this happens one way or the other? I also thought it was kind of amusing from a common sense standpoint, or at least from my standpoint, downplaying the traffic. Now we're going to have to get some uses in there if I'm a commercial developer I would think, and again I am going out and assuming some things here, but I would think that I would need some uses in there that are going to produce some income to justify my payments and costs and things like that. You know, we're talking about beauty salons and things like that. I don't know. Is it really going to...is that kind of income really going to support the cost of this property? I find that kind of interesting. David Matthews, most of you probably are aware, is a local appraiser. He has found and gone on record and researched and found that residential properties that are adjacent to commercial encroachment suffer approximately a six percent decline in property values. Again,



why does a person have the right to do that? Again, it's market research and things like that, but the sales are out there. He's done the research. You know, I tend to believe that is probably the case. We also talked about the small lots. Could you not also connect all those lots on a C-1? Because I know we are downplaying this impact. The developer wants to downplay the traffic, the types of commercial establishments, traffic, you know, the whole bit. Four small lots, that doesn't sound...four small businesses, beauty salons, do not sound threatening to most of us, but that's probably not the whole picture necessarily. I don't know that it's not, but I question that. Some of these things have been going through my mind and I just thought I would throw those out. Thank you.

Mike Mitchell: I'm sure David Matthews has some comps that says that it's even more than six percent. I've seen those and I've see them one percent. What he generally is doing, those comps on are the type of zonings that I have been struggling with 40 acres on Burkhardt and the Lloyd Expressway and we had a whole range of those. I'm sure this lady is correct, but you have to look at what type of commercial. Usually those are the great big ones where like Super Wal-Mart is and all those other places if they were abutting up against some commercial...I mean, some residential properties. I'm sure that would be the case. This is not the case with the small area that we've got. We have a dilemma here. You can't put in apartments which probably have the biggest generator of traffic. They would probably oppose, and I think there is no question that R-1 if we put all the houses in there that would be the second largest generator of traffic, with this being the least. I appreciate the gentleman's comments which is really the developer's problem is that if Mr. Stoll decides to put a median up there that would probably impact it a little bit. I mean, who is going to swing all around, so we're talking and have been along coming home from work go right in and right out. That was the whole concept of this thing. Maybe during day before a median goes up and the traffic at 10:00 in the morning or 2:30 in the afternoon would allow a left-hand turn occasionally. All I can say is that your professional planning staff designated this area, of which this property is a part, as a commercial designated suggested plan for the future. Secondly, five of the seven members of the Plan Commission who voted the other Wednesday night voted in favor of it. I can't help if the leader of the neighborhood doesn't disseminate stuff that's been given to them a month ahead of time or doesn't call Mr. Bauer back and say, hey, what about this? Can we do this? Or something like that. I can't help that.

Del Schiavone: Can I say something?

President Mourdock: Mr. Schiavone.

Del Schiavone: I can tell you that the covenants, the last set of covenants, I was given one night, one day before the Plan Commission. Not a month. One day before the Plan Commission meeting. I had a chance to talk to one neighbor, in fact, two, I guess, that night. There was no way I could get them all together, so I did not have them for a month and sit on them and do nothing with them. We've been very open as far as the neighbors are concerned discussing this whole thing. The whole

neighborhood has, obviously, that's why we are all down here.

Unidentified: Can I make a comment, please?

President Mourdock: Sure, Joe, you get to swear in another one, I think. Were you sworn in earlier, sir?

Joe Harrison, Jr.: Please raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Unidentified: I do.

Joe Harrison, Jr.: Thank you.

Robert Farney: My name is Robert Farney. I live at 3812 Eastbrooke Drive which is one drive north of Mr. Schiavone's property in the area where many of these people live. I wanted to make sure the record shows tonight that there are 30 or 40 people here opposed to this and many of you have been at these hearings starting back in May. There has been group or 20 and 30 people at every one of those meetings opposing this. You are really faced with a decision tonight of whether you'll be generous to a developer and grant a plan that is largely based on promises and hopes or whether you act on a fact that there are 40 or 50 people here opposed to that and have been consistently opposed to this throughout this whole series of meetings. It's presented to you as though you must make an either/or decision. You have an option, I believe as I understand the process, and that is to vote no which basically puts this in the holding pattern for a year and then, I believe, the developer, if it's a worthy plan, can present it and you can judge accordingly. Certainly, the tentative plans and the speculations about the traffic that the developer have offered tonight offer no convincing argument that there will not be a serious traffic problem here as soon as this development is put in place. Ladies and gentlemen, you will be the people who will be dealing with this. We will, too. We'll be experiencing it and you'll be dealing with it. I think you can look down the road and ask yourself when do you want to face this and under what circumstances? It's a matter, I think as I said, of being generous to a developer or acting responsibly to the 40 or 50 people who have consistently opposed this. We trust your judgement and we hope you support us in that tonight. Thank you.

Commissioner Jerrel: Barbara, I have a question.

Barbara Cunningham: Okay.

Commissioner Jerrel: If it is R-1, this front part, and the back part we said no on apartments, but they could build as many homes as they wanted to right now?

Barbara Cunningham: They would have to present a subdivision plan and have to go through the process.

Commissioner Jerrel: Right, but essentially they--

Barbara Cunningham: Right now they can only build one house on

this whole thing, but if they subdivide it then they...if they brought in a subdivision they could build. If they took sewer it could be a minimum of 6,000 square foot for a lot. It could be 60 x 100 foot lots and the street and they would have to do a drainage plan and all that.

Commissioner Jerrel: So there could be...?

Barbara Cunningham: As far as...how many acres do we have? Seven acres.

Commissioner Jerrel: No, I'm talking about the whole thing.

Commissioner Tuley: Thirty-two acres total.

Barbara Cunningham: Thirty-two acres total. That could be quite a few. Jim, you've got a good idea.

Jim Morley: Two hundred.

Barbara Cunningham: That's a lot.

Del Schiavone: A major portion of that lower part is within the floodplains.

Barbara Cunningham: The floodplain can be raised to an elevation just two feet above the floodplain. If it's in a floodway, and I don't believe it is, then you cannot build in it, but you can build in a floodplain with proper designation.

Commissioner Jerrel: I checked on that. That's the point I'm trying to get to is if no action is taken there could be a subdivision applied for with no zoning change?

Barbara Cunningham: That's correct.

Commissioner Jerrel: That would result in some 150 to 200 homes and could be built in that lower level if they were raised.

Barbara Cunningham: I have to qualify that because that's kind of down and all that and I don't know that it could necessarily all be built in there. I would have qualify that. I don't know if the land is acceptable down there to really do building to get above the elevation.

Commissioner Jerrel: Okay.

President Mourdock: The key part of that answer is that as a flood...I always get them reversed, as a floodway--

Barbara Cunningham: You can't build.

President Mourdock: Right, but as a floodplain however--

Barbara Cunningham: You can with proper elevation.

President Mourdock: --with two feet above the base elevation they could build.

Barbara Cunningham: Uh-huh.

President Mourdock: Any other questions, Pat?

Commissioner Tuley: I have no other questions.

Commissioner Jerrel: No, I don't have any more questions.

President Mourdock: Yes?

Joe Harrison, Jr.: Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Unidentified: I do.

Norma Hartz: I'm Norma Hartz. I live at 3326 Oak Terrace. My husband and I built the home as many of these people did. We're one owner families and those are homes are in excellent condition, good neighborhood. If this sort of thing comes in...I live across the street from these people. I guess we ought to put our homes up for sale. You people...we're all working people. You don't live out there. I guess we ought to put our homes up and level it and try to go commercial with all of it and I'm not being ridiculous, but we try to get out. Our soon leaves between 5:30 and 6:00 in the morning, right, Robert Allen, to get on Oak Hill Road? My husband...what time do you leave, babe?

Unidentified: Six.

Norma Hartz: At 6:00 to get on Oak Hill Road. Well, I'm not a morning person, people. I'm in trouble. I am in trouble. So, you know, I said before you just practically get hit. The traffic is my biggest kick. We have Dan Buck doing two subdivisions on the west side of Oak Hill Road. One south of Lynch and one north of Lynch. We have Bussing and Kattmann doing some 200 lots up there in Keystone which is east and north of this. People, I am not lying to you. It does not have to be rush hour to have trouble getting in and out. It's horrible. I'm just pleading for, hey, six lanes out Oak Hill Road if we are going to keep doing all this. We've got to have lanes. We've got to have lanes, it's that simple. You ought to try...like somebody said something about 10:00 or 2:00. Hey, I'm up and down that road all the time. I sell real estate and I know from where I am coming from. That's one of the worst arteries in the whole city to get in and out of and make any time on. My kick is traffic all the way. There needs to be a bunch of lanes out there before we put any residential subdivisions in, any commercial subdivisions or any of it. It is not fair to us. We're big taxpayers. My husband and I own three expensive properties in Ridgewood Estates and one in Oak Hill Terrace and we pay a bundle of taxes. It's difficult to drive. Traffic is my kick, folks. I'm sorry.

President Mourdock: Thank you. Any other questions or comments? Barbara?

Barbara Cunningham: No.

President Mourdock: Oh, I thought you turned your mike on. I think everyone has talked their way through this one and it is time for this Board to act. Obviously, as an ordinance this

will be a roll call vote.

Commissioner Tuley: You have to have a motion in order to get a vote, so at this time I will move approval of VC-6-97 requesting from R-1 to C-4 and C-1 with a Use and Development Commitment.

President Mourdock: There is a motion in the affirmative, as is required certainly by procedures. Is there a second?

Commissioner Jerrel: There is a second.

President Mourdock: Alright, with a motion and a second properly made, Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I will vote no, but it passes 2-1. Thank you. Is there any other business before the Board this evening? Is there a motion for adjournment?

Commissioner Tuley: So moved.

Commissioner Jerrel: Move to adjourn. Second.

President Mourdock: Motion and a second for adjournment. We are adjourned.

The meeting was adjourned at 8:17 p.m.

***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene Timmons  
Barbara Cunningham  
Mike Mitchell  
Jerry Bryan  
Jim Morley  
Del Schiavone  
David Stachowski  
Al Bauer  
Patty Mendel  
Robert Farney  
Norma Hartz  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

---

Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
September 15, 1997**

**Call to order**

President Mourdock: Good evening. The Board of Commissioners of Vanderburgh County is called to order at 7:00 p.m. on September 15, 1997 for the purpose of hearing two zoning matters. There should be an agenda for this meeting on the far table if you like. Because we do transcribe all of our notes verbatim, if you wish to address the Commission you must come to the microphone and state your name and address. Also, we would ask that if you address the Commission and someone beforehand makes the point that you wish to make, we don't need to hear the same points over and over again. Just simply state that I'm here to support Mr. Smith's position or Mr. Jones or whatever and that would be fine. What am I forgetting? Something. Oh, by way of procedure, testimony is taken tonight as an official meeting, so we would ask whoever is going to speak to issues also be sworn in at the appropriate time. Ms. Cunningham will give some statement of facts regarding the zoning items before us, we let the petitioner speak and then those who might oppose the petition are allowed to speak and the petitioner has a chance to rebut those comments and then the remonstrators again have a chance to speak. We do appreciate common courtesy at this meeting. These can sometimes get a little unnerving and we appreciate that, but we've found that it works best when everyone keeps calm, so we would ask you to do that.

**Approval of minutes**

President Mourdock: With that statement, we have in our packets the minutes of our last meeting for rezonings on August 18, 1997.

Commissioner Jerrel: I would like to move approval of the August 18th minutes of the last zoning meeting.

Commissioner Tuley: Second.

President Mourdock: So ordered.

**FIRST READING**

**VC-12-97 Action Trailer Sales & Rentals, Inc. 12600 Highway 41  
North**

President Mourdock: For first reading tonight we have VC-12-97. The petitioner is Action Trailer Sales & Rentals, Inc. The address is 12600 Highway 41 North. They are requesting a change from AG to C-4. Barbara, I don't know that you have comments at this time.

Barbara Cunningham: We don't make comments at this time.

President Mourdock: On first reading then I would look for a motion of approval of that.

Commissioner Tuley: I will so move that VC-12-97 be approved on first reading and forwarded to Area Plan Commission for further action.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

<b>FINAL READING</b> <b>VC-11-97   John Wimberg   1730 Orchard Road</b>
--

President Mourdock: For final readings tonight, then, we have just one which is VC-11-97. The petitioner is Mr. John Wimberg. The address is 1730 Orchard Road. He is requesting a change from AG to R-2. I would ask at this time, Joe, if you would, to swear in all those who would be speaking to this issue either for it or against it.

Joe Harrison, Jr.: Those of you who wish to speak on this, please raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Response: We do.

Joe Harrison, Jr.: Thank you.

President Mourdock: Okay, thank you. Barbara.

Barbara Cunningham: John E. Wimberg is the owner of the property and the representative for this proposed rezoning for his residence located at 1730 Orchard Road. This residence is located on the south side of Orchard Road between Oglesby and Hillside Drive. Mr. Wimberg is requesting a change from Agricultural to R-2 for his 1.58 acre site. The petition was heard at the September 3rd Area Plan Commission meeting and received a no action or no recommendation vote with two yes votes, five no votes and one abstention. Mr. Wimberg is requesting a step up in residential zoning classification to R-2 to allow the existing single family residence on this site to be converted to a duplex. A duplex in an R-2 are two residential units in one structure. The size of the residence can easily support two independent dwelling units. All utilities are available to this site except sewer. The site is served by a private mound dosage-fed septic field bed system and the septic system must meet or exceed Health Department standards for a two unit building. Compliance with residential code requirements would be addressed by the Building Commission Office upon receipt of required permits for conversion of the residence to a duplex. I believe, and Mr. Wimberg can correct me, that the septic system has been installed that could meet the requirements for a two unit dwelling. Orchard Road is a narrow rural residential street. The site currently has a paved driveway and no additional access is planned. There is only to be the one access. The proposed duplex would require two parking spaces per dwelling unit or four spaces and there is adequate parking and could be provided on-site. The Comprehensive Plan designates this area for residential uses although there have been a couple of commercial rezonings in close proximity in recent years; 1600 Orchard Road was rezoned to C-2 in 1996. If you'll remember that was Head Appliance, I believe, that was rezoned, and 1501 Orchard Road was rezoned to M-2 in 1985. That's rezoned to M-2, but I think at this time it is not used as M-2, but it still has that zoning classification. This site is in a stable residential neighborhood just outside the city limits. The step up in residential zoning to R-2 is not inconsistent with the Comprehensive Plan.

President Mourdock: Okay, Mr. Wimberg would you care to address the Commission?

John Wimberg: I have some handouts, do you want them?



President Mourdock: Sure.

Commissioner Tuley: Sure.

John Wimberg: Good evening. My name is John Wimberg and I am retired as the Deputy Director of the Office of the Inspector General for USAID and Department of State of Washington. I live at 1730 Orchard Road. I've been connected with this property for at least 15 years having sold it as a realtor and then I bought it myself in 1988 or '89. I would first like to describe for you our unique neighborhood to help this council to better understand this petition. This is not Brookshire Estates or Copperfield Subdivision where each new home must meet certain deed restrictions and cost requirements. Our neighborhood sort of grew like topsy. For want of a better description, I would like to describe it as a socioeconomic hodgepodge. Unfortunately that's what it seems like. In 1972 Mr. Joe Schnee, a local liquor dealer, obtained thousands of old bricks from the torn down Central High School downtown. He bought 12 acres of land on Orchard Road and then he built what seemed to be an ostentatious home for this neighborhood, at least at that time. Orchard Knoll came along later with \$300,000 to \$500,000 homes and six figure incomes. Our home has more than 5,300 square feet, 25 rooms on three separate levels of living space. It has a family room on each of three floors with three fireplaces. Each level is 1,800 to 2,000 square feet. A mother-in-law's apartment on the lower level is a full walkout basement to a 43 x 19 swimming pool. You can see some of the photographs I have given you there. It really is something of a white elephant in a unique neighborhood. We have brick walkways, brick planters, brick walls and old brick construction all from Central High School, something of a historic feature, but it's still a lot of unused space for our small family. In 1973 our home was built directly across the road from what we call an in-ground house. Now what's an in-ground house? If you recall the western pioneers, they dug out a hillside with three dirt walls on each side. They put a front on it and a roof and they defended against Indian attacks and that's what we've had across the street until recently when Mr. Tony Guntel, to his credit, came in and built a superstructure on it. He has improved it, but nevertheless, that was the in-ground home that was there for many years for us. This earth home was built in 1944, but could of easily been built in 1844. The earth house where the Guntels live was for many years quite a contrast to this ostentatious home that Mr. Schnee built. Of course now Tony, to his credit, has enlarged it. Schnee went bankrupt in 1981 and the neighborhood changed again. The Haubstadt State Bank then split up this 12 acre estate selling off four acres to Mr. Jerry Cavanah, a retired artist who is not here tonight, who built a one bedroom cabin raising it up more than three feet above the floodplain. Cavanah's cabin has annual taxes of \$595. The bank then also sold off 6.40 acres to a roofing contractor, Mike Turi. The Turi land contains what you might say is a barn home. It looks like a barn, it's shaped like a barn, but it was remodeled into a five bedroom home. This home served as a guest house for Mr. Schnee while his mother lived there. In 1994 this Mike Turi sold the home to the Poulsons. There are two problems with this home. One, it's located too close to the new property line which the bank sectioned off. They gave me 60 or 70 feet so I could retain 1.58 acres, but their 6.40 acres is really to the east of them where their home sits some ten feet or so from our property line. Then two, it sits in a hole on a floodplain. Our home is on the high ground, which Mr. Schnee built, but the land slopes down to a big drainage ditch in the back. Then you can refer to that floodplain on the map that you have. I marked a couple of properties. The highlighted area shows my home and it shows where the Cavanah and the Poulson home might be. In 1987 the Oglesby family, actually Mrs. Guntel's mother, I believe, created the Orchard Knoll Subdivision constructing a large knoll or a hillside just on the north side of Orchard Road. This new hillside had the disastrous effect of reversing rainwater flow from the north side

of Orchard to cross the road and enter Poulson's land which was already in jeopardy being on a floodplain. This extra water was too much. In May of 1966, last year, a sudden cloudburst brought six inches of water--

President Mourdock: Excuse me. Did you say `66 and you meant `96?

John Wimberg: I'm sorry.

President Mourdock: You said last year, but I think you said `66.

John Wimberg: Thank you, 1996, I can't hardly read it. Yep. In 1996, last year, this cloudburst brought six inches of water into Poulson's family room and garage area soaking carpet and drywall, unfortunately. I did visit the Poulsons and I suggested some corrective action that they might take as far as the north side of Orchard. Then in July of 1996 while I was out of town the Poulsons came onto my land not realizing where their boundary was and they brought in large excavating equipment, bulldozed over my survey marker that I had installed years ago and they dredged out a two foot deep drainage ditch and a large arch around their home to catch this water and save it from the home. They trespassed and excavated about 3,000 square feet of my property without approval or knowledge. This heavy equipment compressed my septic field bed soil so that it could never again absorb water. That's what happens to septic fields, if you are familiar with that, and they disturbed my gravel bed which was under the ground. I have a legal cause of action against them if I choose to pursue it. In September of 1996 they complained to the Vanderburgh County Health Department about my septic effluent leaking into their new drainage ditch which by that time they had reset over on their own property. They moved it from my land to their land, but it had already damaged it. So I had to build this new dosage system with pump and alarm; very expensive. It took about six or seven months to do that because the water was so heavy into this land that you couldn't dig there. The contractors could not dig they told me, but in July we did finish it and it is serving the home well now, all the bedrooms. This neighborhood is in contrast to the expensive homes across Orchard Knoll. Our own home is much larger in square footage than some of the Orchard Knoll homes costing much more, but some of which only have 3,000 square feet. We've got almost twice that. We simply have a white elephant, if you will, with a lot of unused living space, so we are therefore asking for this step up zoning to R-2 in order to more economically use the space which we have. There would be absolutely no change in the external appearance of this home. You have a photograph there on one of your handouts. The only internal change would be locking a door to the basement. What we are asking for is a higher and better use, as they say, of this home and R-2 zoning would allow us some benefits of all that we're paying taxes on. Speaking of taxes, I have another handout there which shows that we pay as much in annual taxes as all seven abutting neighbors combined most of whom are not here, by the way, tonight. I'm thinking now of the two week ago meeting when it was claimed that we would devalue their property. That is simply untrue. It's smoke and mirrors and I think the council can see through that. Our property is the one that is in jeopardy. You have already pointed out the C-2 zoning for the Head property, I won't go over that and the M-2 zoning. I was unaware of Head's rezoning, but I certainly wouldn't of objected. In our petition some neighbor obviously got hold of a printing press or a copy machine and printed up handbills which were then hand delivered to many homes in Orchard Knoll inciting these people to become remonstrators against what he is trying to do over there, rezone or what? One of them did call me laughing about what's this all about and I explained it away and he wasn't even interested, but the handbills were trying to build up a furor. I mentioned that some time ago I read that Bob Dole as a young boy in Kansas moved into the basement of his parents home while they

rented out the upstairs. The article didn't say if he had to go through a Rezoning Board, but he did rent it out most likely for economic reasons the same as we face. The small rent which we would receive would hardly cover the monthly taxes and utilities of this home. Our kids are mostly gone from home now. At one time we had six cars and a motor home in our driveway, but no more. We're down to three cars and you already heard the Staff Report, so I won't repeat that. The home can easily accommodate the two units. There is just too much unused or wasted space. We also noted that while Mike Turi lived in the home next door, this so-called barn home before the Poulson bought it, that there were constantly tenants and live-in people there. He was divorced twice and there were always missionaries from Texas or seminary students or people who just lived there with him. We didn't care about that. These were nice people. Live and let live. We could sell our home and even move out of state, but we have roots here in Evansville. I want to mention just from nostalgia here now that the Wimbergs came to Evansville after the Civil War. Henry Wimberg built Sterling Brewery. His son was brewmaster there for 50 years. My grandfather was Chairman of this County Commission in 1912 to 1916, John Wimberg. We don't own any of the Sterling Brewery, but they're still making beer after 100 years. I don't own it, but I still drink it some. My granddad served as Chairman at the time when they built the Coliseum in 1916, Bosse Field in 1915 and in 1913 the city didn't have water meters and he put the first water meter into the City of Evansville. I'm naive and inexperienced about the ways of this council, but I am trying to do it without legal help. I try to tell my story and appreciate the councils' patience and understanding. Thank you.

President Mourdock: Okay, thank you. You're a brave man. Not many would admit they had a relative who was a politician!

John Wimberg: Well, I didn't get into it myself.

President Mourdock: It generally skips a generation or two. Remonstrators. Anyone wishing to speak? You were sworn in were you not?

Sylvia Guntel: My name is Sylvia Guntel. I live at 1731 Orchard Road which happens to be the underground home that Mr. Wimberg was referring to that is no longer a underground home. I have lived in this neighborhood for 32 years. I'm giving my age away. I was born...my grandfather lived in that home that I now live in which was an underground home. It was probably the first home that was ever built in the area because all around it was farmland. We'll do a little history. My grandfather sold the land across the street to Joe Schnee. Yes, he did build a very large house for the area at the time, but, of course, he built the house knowing that the underground home next door was in a lot worse shape than it has been for years at that time. A big old barn set next to it falling down with people coming and going all the time. This subdivision was put in by my family. There was some drainage problems down in the lower half of our neighbors' homes at the time it belonged to Michael Turi. The problems didn't come with us changing any land structure, it came with us just tearing off trees off of a hill and putting in a road. We didn't really change any of...we just tore down trees that was holding back all the drainage. To my family's expense we took care of digging out all of that for him and had that corrected. I don't know what the drainage problem has to do with the rezoning, you know, because apparently they've got that under control now after Michael Turi did his little bit with it. The septic system problem...I would say the septic system started with us. We were the first ones. My neighbor Mike Turi turned us in to whoever, the Health Department, because we didn't have the proper septic system, so we put in the proper septic system just like they told us we had to. Then from what I understand from Mike Turi himself is that Mr. Wimberg turned him in a few years later

because he had septic leaking on his land and then I understand that still didn't fix the problem and so they complained of raw sewage on their land and now the problem seems to be fixed. As far as who pays taxes out there I don't see what that has to do with anything about rezoning the home. We just spent over \$100,000 to improve our home. This is where we plan to stay for the rest of our lives. I don't feel that we should have to jeopardize the value of our property. He says it won't make a difference, but when they go to appraise that home and they go to look that there is a duplex across the street in a primarily single family home residential area it's going to make a difference. I mean, it makes a difference how your garage sits in the eyes of the appraiser, so it just depends on the appraiser. I've been through it I don't know how many times, building our home before our home was built and everything. We have built a pretty substantial house which it might not be 5,200 square feet, but it is the equivalent, I would say, in value to Mr. Wimberg's home. I know that he has had his home up for sale two to three times in the last few years and has unsuccessfully been able to sell it. The reasons for that I don't know if he is asking too much money or what. It's not that I want him to move out of the neighborhood and I could care less if they let 100 people live over there, but by zoning it to R-2 as a duplex it will always stay that way. It can be sold as a duplex and, you know, when they leave it still is going to be a duplex. People can do what they want to do with it. When we had that little rainfall last year, that little six inches of rain that flooded our neighbors, well, I was one of them too. We had started building our home and we didn't have a roof, so my whole entire home got flooded with eight inches of rain underneath us, so, you know, they weren't the only ones that got flooded. We were right along with them. That's about all I have to say. Thank you.

President Mourdock: Thank you.

Gary Poulson: Hi, my name is Gary Poulson. I live at 1716 Orchard Road. I am Mr. Wimberg's neighbor and I feel as though he shouldn't have it rezoned. One reason is our home has been appraised at around \$140,000. I don't want it depreciated by a duplex going in beside it. I didn't move my family from the city to the country to have the city come out there with us. If he is allowed to do this you don't know what kind of people he will rent to. It's possible they will be coming and going at all times of the night and day. Who knows? Having a pool in the back of their house I am concerned about parties going on at all times of the night or whatever. As it was stated before, the area is comprised of single family homes. My concerns about this is that both houses do sit 10 to 20 feet off the property line as Mr. Wimberg has stated. It was divided and sold and I do have six and a half acres to his one point five and I am concerned about people trespassing onto my property for athletic activities. I would also like to point out that Mr. Wimberg lied under oath at the Area Planning Commission hearing when he said that we created his raw sewage problem when we had drainage ditches dug. That's not a true statement. Before we bought our house in '94 we noticed an awful smell on one side of the house. That side faces the Wimbergs. We had our septic tank checked because we didn't want to buy a house and then have to invest thousands of dollars into a septic system. Our test came back negative and I have a letter to that effect. The only other septic in the area was Mr. Wimberg's. In closing, I hope you reconsider my concerns about the matter and don't let him rezone his property. Thank you.

Commissioner Jerrel: I have a question.

Gary Poulson: Okay.

Commissioner Jerrel: Where is your property, like in relation to this picture. I mean, what side of his house--

Gary Poulson: It's actually on the other side.

Commissioner Jerrel: So it's--

Gary Poulson: He sits here and our house is (inaudible comments made away from mike).

President Mourdock: Your house is the one very close to the property line?

Gary Poulson: Yes.

Commissioner Jerrel: How far away is his?

Gary Poulson: His house sits up here, but it is about the same distance. It's the same distance off the line. It's like they took the line and split the difference.

Commissioner Jerrel: You're facing...I'm just trying to get a picture. You're facing...do you face his house?

Gary Poulson: No, we both face Orchard Road.

Commissioner Jerrel: Okay, you're not on the driveway side?

Gary Poulson: No, his drive--

Commissioner Jerrel: Is over here?

Gary Poulson: --is on this side and our drive is over on this side.

Commissioner Jerrel: Alright.

Gary Poulson: Can I add a few things?

President Mourdock: Sure.

Gary Poulson: About the drainage problem that we had. We did have a lot of rain that year. They call it the 100 year rain.

Commissioner Tuley: We know!

President Mourdock: This Board is very familiar with that.

Gary Poulson: I don't know how often this area is flooded. We've had trouble the one year. If you'll recall, it rained like for three days and the ground was so saturated that we did have water seeping up through our floors. We have a concrete slab in part of the house. The water coming down off the side of the hill was enormous. We did have roughly two to three inches in our garage, but the water damage from inside the house mainly came from the pressure of the groundwater coming up from the bottom. As soon as the rain quit the water was gone and the problem was solved. We didn't want to invest money and be in the same situation, so we did have the ditches dug. It's heresy from what I am hearing, but what I've heard is that there were previous ditches there. I don't have anything to substantiate that. That's just what I have been told from neighbors. Thanks.

President Mourdock: Thank you.

Jody Poulson: I do want to add that before we had the ditches dug I did go to Mr. Wimberg and let him know what we were going to do and he did, you know, he just said, okay, do what you have to do so you won't get flooded again.

John Wimberg: I can't hear. I'm sorry. Could you put the mike down please?

Jody Poulson: The man who owned the home before us did tell us that there was a ditch beside our home at one time and he did have to fill it in because of the raw sewage problem. Of course, that didn't help, but it did subside some. Whenever we had our ditches dug, you know, we just said dig the remaining...there was a previous ditch, please just make it again. I do have a written note. My name is Jody Poulson and I live at 1716 Orchard Road. I live next door to Mr. Wimberg. I am here tonight because I am against what Mr. Wimberg is trying to do. Before the year of '94 my husband and I owned a home down in the North Park area. We both had lived our adolescent years in the country. We had our need to go back to the country to raise our children as we were. I have a son that is six and twin girls that are four and I plan to have more in the future. In '94 we found our American dream. An approximately 3,000 square foot home with approximately seven acres. Now I feel our American dream has been violated. I am disappointed because Mr. Wimberg has the idea of changing his home into basically an apartment complex. I quote him at the last meeting we attended in which he had said he had 5,200 square feet of living space in which part of that is what you call a mother-in-law's den. Please don't take the meaning of the mother-in-law's den away. That purpose was to care for your family in a time of life when needed. He is very fortunate to have that set-up in his home. I don't know what the purpose is for Mr. Wimberg rezoning to a Residential-2. If it is for extra income there are plenty of duplexes up for sale in the city or if it is because he has too much space, in which he had mentioned at the last meeting, please sell your home and let someone else have the American dream. I am also concerned because if his house is rezoned and then he chooses to sale someone could buy with intentions of only using that for a duplex. Then we would have people coming and going at all times. My last concern is depreciation of property. The homes around the area have abundance of square footage and only seen the value increasing. By having a duplex in the area, especially next door, in my opinion would decrease the value plus decrease our chances of selling in the future. Please, let us have our American dream and keep our countryside the countryside. Thank you.

President Mourdock: Okay, thank you. Any other remonstrator wishing to comment?

Tony Guntel: My name is Tony Guntel. I live directly across the street from the Wimbergs. I have lived in this area for 37 years. I know what it all looked like before anybody ever done nothing to it. The creek is gone that used to take off the drainage where the county had a culvert under Orchard Road. That creek is all gone now so the drainage is wild out across there. All I can say is I think Mr. Wimberg has got more home than he needs now and that he should possibly think of selling the home rather than making a duplex for me to sit in the home that I plan to raise my family in and have to stare at a duplex from now on. That's about it.

President Mourdock: Okay. Any other remonstrator wishing to speak? If not, if you would like to address the comments? It's up to you, Mr. Wimberg.

John Wimberg: I couldn't hear them all, but I've got some notes. The excavation on my property, 3,000 square feet, see their home is located 10 or 15 feet from the line. Mine is about 70 or 80 feet not what he said, so it is very close to their land so reasonably

they thought that was their land out there and they came in with excavators and tore it all up, 3,000 square feet of my land, without asking. I mentioned already that disturbed the gravel and it also compressed the soil so that it wouldn't function as a field bed anymore. It was just ruined. They tell you that when you're building a field bed. Don't let the big trucks drive on it. I think that excavation really...Mrs. Guntel said what that had to do with being upset is that excavation is what got everybody angry in the neighborhood, especially the Poulsons and me. Paying of taxes. The only reason that is significant in here is the idea of devaluing. It already shows who is paying what for the value of their properties and I pay as much as all the other seven abutting neighbors put together. The appraisals, they're not scientific. They're pretty good guesswork. Sometimes people pay that and sometimes they don't, but I think my property is in jeopardy for being devalued as opposed to others who are not...I pay more taxes in five or six weeks then the Guntels pay in one year on that home. It's going up now because they've improved it. We did put it up for sale a few years ago. People looked at it. They like this big monstrous home, but they went outside and looked across the road and said what's that and I couldn't tell them what it was. I already told you folks what it was. Mr. Poulson mentioned noisy parties--

President Mourdock: Excuse me, let me clarify the point that you made. You're saying that the house that the Guntels had prior to their repair or remodeling--

John Wimberg: Remodeling, yes.

President Mourdock: --is what was there when you tried to sell your house?

John Wimberg: Yes.

President Mourdock: Okay, but you haven't tried to sell your house since the time they did their repair.

John Wimberg: No.

President Mourdock: Okay, I just wanted to be sure I understood.

John Wimberg: Not in the last several years, but people did make that comment that, of course, that home was there. He has improved it. We don't want to take away his credit for having done that. I am just pointing out now that the tax value relates to what the appraiser says all these properties are worth and I'm the guy at risk, I feel, as far as devaluing whatever I do inside my home. Noisy parties. I don't know if we've had any. We don't even use that swimming pool. Mr. Poulson, I think, is a member of a rock band and they crank up on Saturdays in the pole barn on his property and I'm telling you the decibel level is out of sight. You can't hear yourself swim or anything. I mentioned that my home is 70 to 80 feet off the line. His is very close which explains the reason they thought it was their property, but we're going to establish whose property it is. The awful smell in '94 came about because Mike Turi...see the homes were connected. Joe Schnee built the guest house for his mother, I didn't mention that, and our home. They were on the same septic system for 16 years. Guess what? Turi never said anything to me after I bought it and I am paying for the emptying and pumping of this septic system, sorry about the subject, but without helping me pay for any of that. He just watched us do that.

President Mourdock: The guest house that he built at that time is the house that the Poulsons now have?

John Wimberg: Yes, that's right. The so-called barn home. It was connected to our septic tank and Turi when he was preparing to sell it I asked him to build his own septic system and he did on this floodplain which I understand now could not be approved. You've got to have a dosage mound system up in higher ground, but he did that and he chopped the line between the two homes. Instead of going down and capping it, which I had to do later at extra cost, get somebody go in and cap it at my tank and put a sealed PVC cap on there, glued it, he just broke the line and threw in a bag of mortar saying that will seal it. I said, well, whatever you say and so that is where the stink came from between the two homes that they observed in '94 when they bought it from Mr. Turi who cut into the joint system and failed to repair it properly. We've solved that problem. We've got a new dosage-fed system. Was there any other point that I didn't answer? I don't think so, but I wanted to offer this. Our tenants will be nice quiet people and we'll screen them carefully. You won't have noisy tenants. We're not going to have big parties at our swimming pool when we're still living there. On that score, since Mrs. Guntel has pointed out that people come and people go I would like to offer to sign a separate use agreement with these neighbors stipulating that the R-2 zoning shall apply only so long as we own and live in the home. In the event that we should sell it and move away we would agree to petition and return the property to AG zoning.

President Mourdock: Okay, I want to pursue that point as a point of law here and procedures.

John Wimberg: Okay.

President Mourdock: Joe and Barbara, would you please comment on that?

Barbara Cunningham: (Inaudible).

President Mourdock: Turn the mike on before you do.

Barbara Cunningham: He could do that as a private commitment. As an agency it would not be something that we would wish to do or enforce. We never want to say they promise to zone back because we don't know when anybody leaves, but he could do it with the neighbors. He could do a private agreement with the neighbors or a private commitment to do that.

Joe Harrison, Jr.: It would be a private covenant as opposed to a Use and Development which would be something that could run in favor of the county, but that would be a private covenant if he wants to do something.

President Mourdock: So I am going to say what I think I know, but just so everybody in the room understands it. I may be presumptive with my own thinking here. The private agreement that he would have with his neighbors to do what he just outlined which is to only allow the separate use, or this second--

John Wimberg: R-2 step up.

President Mourdock: Yeah, R-2 would only apply while you lived at the residence. You would, in effect, sign a contract with the neighbors stating that would be the case and therefore if you ever did something different than that there would be effectively a breach of a contract? Is that stated correctly, Joe?

Barbara Cunningham: We better both talk. Once it's zoned it is zoned on our books



forever, so I don't know about that do you? I don't know if you could do a Use--

John Wimberg: I'm agreeing to petition again to rezone it should we sell it. I noticed that Mr. Hobert Head did that when he zoned that property next...two away from the Poulsons. He zoned it to C-2 and in his statement on that Use Commitment he recognized that they might have concerns and he agreed if they quit repairing appliances on his property that he would petition to rezone it back to Agricultural and I am offering the same deal if they'll accept it.

President Mourdock: You understand that would start this whole process over again as far as doing the filing, going back here with a first reading--

Barbara Cunningham: As far as on our books it would remain R-2 until the neighbors initiated an action.

President Mourdock: But at least that would give them the right to do so.

Barbara Cunningham: It would give them the right to do that.

John Wimberg: We would ask for a continuance if we could until such time as that document could be prepared and executed and hopefully presented at the next meeting to show that there is...they haven't said whether it is acceptable or not.

Sylvia Guntel: Still when our home is appraised--

President Mourdock: You'll need to come to the microphone.

Sylvia Guntel: I mean, I understand what he is trying to do, but still when our home is appraised and like he said an appraisal is just an opinion of the appraiser, but they have a little statement on there that states what kind of homes are in the area around the home on there. I still feel that the value of our home will be decreased if they know that there is a duplex across the street because what do you think of duplexes? You think of renters, you think of coming and going regardless if we have the agreement with the neighbors.

Commissioner Jerrel: Could I ask you a question?

Sylvia Guntel: Yeah, sure.

Commissioner Jerrel: You keep referring to getting an appraisal. Why would you get an appraiser? Are you planning on moving?

Sylvia Guntel: I'm just saying--

Tony Guntel: Maybe someday I can't afford to live in the house I live in and I may need to sell it.

Sylvia Guntel: That's true, you know. If we ever decide, you know, who knows? We might decide to refinance if interest rates go way down. We have to have it reappraised. I mean, I had to have it appraised two times just to put this addition on. Before, I had to have it appraised in the middle and after. You know, three times actually. In every appraisal the little statement on there describes the area around my home and what the houses are like. As far as his home not selling because of mine being an underground

home, my neighbors on the other side of me didn't hesitate to build \$250,000 plus homes that look right down into my home, so I can't say that applies.

President Mourdock: Pat, did you start to have a comment there?

Commissioner Tuley: No, no. I was just trying to figure out on the covenants.

John Wimberg: Does that take care of your concern that if we move away it will be still a duplex? You had brought that up that we are liable to move away and then it would still be a duplex.

Sylvia Guntel: Yeah, it would be a duplex and you could sell it as a duplex to somebody that wanted to make money off of it, you know.

President Mourdock: I don't think you understand that one correctly and, Barbara, correct this one. If he comes back, goes through this process and gives them the special use and if he leaves then they would have the right to petition the removal of that R-2. Is that not correct?

Barbara Cunningham: That's correct and I don't mean to cause you any problems, Mr. Wimberg, but I wouldn't know when you were leaving--

Commissioner Tuley: But they would.

Barbara Cunningham: --so you could sell the house and according to my books it would be a duplex and I would not be enforcing anything and you could sell the house as that.

President Mourdock: But if he did that I understand that you wouldn't know, but they would know and they could start the procedure to take it back to R-1.

Barbara Cunningham: They could initiate action.

(Several members of audience talking)

President Mourdock: Wait a minute, is that correct?

Barbara Cunningham: They would have to do that, that's correct.

President Mourdock: That's right. You would have to do that, but, again, you have that stage through this agreement to do that.

Jody Poulson: But wouldn't it also--

President Mourdock: You need to move to the microphone, please.

Jody Poulson: When we go through that process couldn't it have a chance to be denied?

Barbara Cunningham: You would be going to court.

Jody Poulson: I know, but still I'm saying that could still be denied. You know, who is to say when he sells that home that the man or woman who had bought that and wanted it to be a duplex only and we would have to fight them. What if it's denied, then we're out of luck. That's just one concern. I'm concerned. I don't want a duplex living right next

door to me.

Joe Harrison, Jr.: That's the thing. The covenant runs with the land and when he sells the property he would put in the covenant that it would revert back to AG or whatever it is.

Barbara Cunningham: It couldn't revert. He would have to zone it.

Joe Harrison, Jr.: Yeah, he would have to zone it back before he sold it. At the time of transfer.

Jody Poulson: That's just one of the many options.

Joe Harrison, Jr.: Well, that's the only way it would work.

Jody Poulson: I don't want a duplex next to me. I mean, I'm sorry. I like this gentleman, but I've had rounds with him. It took me a year and a half fighting the Health Department stating, I'm sorry there is nothing I can do about a sewage problem and finding my kids playing in it. Come to find out he lied to the Health Department stating that Area Plan told him it was on hold which he never talked to Area Plan at the time. I don't want a duplex next to my home.

President Mourdock: Respectfully, that is the subject. I mean, what's past I don't know about.

Jody Poulson: Right.

President Mourdock: Quite honestly, it doesn't and shouldn't effect this Board.

Jody Poulson: Exactly.

President Mourdock: It is how does this zoning proposal meet the requirements of the law and of the requirements or at least the recommendation that is put forward in our Area Plan Commission master plan, if you will. We're trying to find a way that we can solve all those problems and there may not be a mutual way. I do hear Mr. Wimberg saying that he is trying to find a way to make it work with the neighbors to some degree and I fear this is a little bit like a crap shoot where it is winner take all and maybe that is not the best situation either, but under the present proposal that I hear that's what we're looking at.

Unidentified: May I say something?

President Mourdock: Were you sworn in before?

Unidentified: Joe, would you swear this lady in please and then you can speak.

Barbara Cunningham: You have to come to the mike.

Joe Harrison, Jr.: Raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Unidentified: Yes.

President Mourdock: Okay, please come forward. State your name and address.

Rose Wimberg: Sure. My name is Rose Wimberg. I am John's wife. I thought I was not going to say anything because I'm afraid I don't speak enough English to say, but seeing everything that is spoken I thought I would like to say a few words. I'm not saying anything against anything, I'm just trying to add in something that my husband didn't have time to say it. When you don't like the house or something then you move out, but the house we have been living there for many years with kids and things. We would like to stay. They say if it's too big just move out. That's easy to say, but not easy to leave your dream home. That's the reason that we're trying to stay in it. I love it very much and the kids are gone. Our youngest is going to be in college next year and John and I will be alone in that big house and I don't have the heart to leave it. That's the reason why we do stay. I mean, it's easy just to sell it and buy a smaller place, but I love the place. That's one thing why we want to stay in. They're saying just sell it and leave, but we can't leave that place because we love it. On the people who live under us in the mother-in-law apartment that we are trying to share too many square feet with we will control who lives under us. We're not going to get anybody in who can make noise because we live there. I mean, we live there in the place. Not that we just rent it and whoever making noise and doing whatever they want. We control that, so that is one thing that I want to mention that if they're worried about noise and things we control it because we cannot stand the noise either because we live above it and they live many, many yards away so we'll be the one to hear all the noise. That means we should control that problem of who we are going to rent it to. Not just anybody who can get in there and stay because we live there. Let me see, maybe...well, I think that is probably all I've got to say. I want to add to you so you understand why we want to stay. Thank you.

President Mourdock: Okay, thank you.

Rose Wimberg: I want to say more, but I don't think I know enough English to say more.

John Wimberg: We didn't plan on her testifying, but I want to add the point about her children playing in the drainage ditch that she really needs to watch those children, you know. If you don't watch a child 110 percent of the time they're out there playing and they could get in deep trouble. There are woods nearby and I sure don't want to spoil her American dream. I would like to read briefly from the testimony a couple of weeks ago when she brought up the point she doesn't feel as though my home need to be zoned commercial and I think a lot of this anger and emotion starts with that concept which is totally faulty logic and that is what I am addressing here someone who thought I was going to go commercial and it would devalue the property. She said that she lived in a duplex before when they were teenagers and there was fighting over parking spaces and when you could have parties. There was a lot of fighting. I can believe that. The Guntels also testified that they spent \$100,000 improving their home and I notice the building permit was only for \$65,000 so the tax man cometh.

Tony Guntel: The tax man knoweth. The tax man knoweth I spent \$150,000--

President Mourdock: The tax man has a way of finding out, I understand.

John Wimberg: He's a good guy after all.

Tony Guntel: The tax man had me spending more than I had.

President Mourdock: Okay, anything else, Mr. Wimberg?

John Wimberg: So where do we stand on the agreement then?

Sylvia Guntel: I have another question.

President Mourdock: Sure, please come forward.

Sylvia Guntel: I mean, if we all agree to this agreement, which I am not saying that I am agreeing, but it really doesn't stand anything legally because he can sell the house and then move out and then we would have to go to court and fight him. You know? We're young families. We don't have that kind of money, you know. We have a teenage daughter and we have a ten week old little baby. We don't have that kind of money to have to fight something like that to have it converted back over.

President Mourdock: Okay, again, let me clarify this point. Barbara and Joe, if...well, you tell me how this works. If Mr. Wimberg does something by way of a petition either as a special use...not a special use, a restricted covenant is there some mechanism by which he can have the R-2 situation, but upon his sale of the property have it revert back to R-1 without action by any of the neighbors? Is there a legal mechanism by which that can work?

Barbara Cunningham: I would not ask that it be put in a Use and Development Commitment. We never know. The way to do that would be you could do a private covenant and put it in the deed restrictions and so when they got ready to sell, then they would have to...I'm sorry. When they got ready to sell, he would have to initiate a rezoning.

Commissioner Tuley: Prior to the sale?

Barbara Cunningham: Prior to the sale.

John Wimberg: I'm agreeing to do that. I'm agreeing to petition to have it rezoned.

Barbara Cunningham: But he would have to do that with a private agreement and he can do that.

President Mourdock: Excuse me. A private agreement with whom?

Barbara Cunningham: Well, he can do a private agreement like Mr. Bauer did on MIB that last time where he attested to everyone within so many feet, you know, that he wrote the agreement...Joe saw it.

Joe Harrison, Jr.: Yeah, they don't have to sign it. It could just be a restrictive covenant.

Barbara Cunningham: But it has to be recorded.

Joe Harrison, Jr.: It would run with the land and he would say that prior to the time that he sells the property, transfers the property, that he would petition to have it rezoned back to whatever. Who knows if that would succeed.

Tony Guntel: Will you be the same people to hear the petition? No. The next people

here may deny it.

Sylvia Guntel: Even if he had it rezoned back to an R-1, which that's what it should be an R-1 right?

Joe Harrison, Jr.: It can be AG.

Commissioner Tuley: It can be AG. That's what it is now.

Sylvia Guntel: Okay, well, it really should be an R-1. I mean, mine is an R-1 because it was AG, but it was zoned back then with the subdivision, you know.

President Mourdock: Yours might be R-1, but his would be AG.

Sylvia Guntel: Okay, to zone it back that way, but would he have to do that before the land was sold?

President Mourdock: Yes. Stop. You don't have to ask any other question.

Commissioner Jerrel: It would be a covenant.

President Mourdock: The answer there is yes.

Sylvia Guntel: Okay.

Jody Poulson: It could be denied.

Tony Guntel: It could be denied.

Commissioner Jerrel: No, we don't have anything to do with it.

Commissioner Tuley: You would with the rezoning. What they're saying is the next Board hearing him petition to rezone it back to AG may deny it. I mean, anything is possible, but that doesn't make--

President Mourdock: It doesn't make logical sense to me that that would happen.

John Wimberg: That's a step down zoning.

President Mourdock: I do not ever recall a step down in zoning being--

Sylvia Guntel: My only experience with them covenants are like the covenant with the subdivision that is part of mine. You know, one person built a house about less than 30 square feet smaller than what the covenant says. Now what are they going to do? Make them tear the house down? You know, there is nothing they can do.

President Mourdock: Well, that's a separate issue.

Sylvia Guntel: Yeah, I know.

President Mourdock: It's totally different than this. You're talking a totally different type of covenant there that's not effective to zoning. That is simply a covenant within a subdivision.

Sylvia Guntel: I see what you're saying.

President Mourdock: Yeah, there are different types of covenants. Okay.

Commissioner Tuley: If he was to do the covenant as you talked about, does he need to petition the Board for continuance for 30 days or how does he do it?

Barbara Cunningham: You're looking at land use. Whether this is good R-2 or not is what, you know, you're looking at tonight. Now I mean it's up to you. You're not going to enforce any of these private covenants. It's up to you if you want that filed or recorded or before you sign off on it if that has to be presented. It is not part of your proceeding, but if you don't want to sign the ordinance until that is present, I mean, that's a way that could be...are you with me, Joe?

Joe Harrison, Jr.: No, you all have done that before.

Barbara Cunningham: Not often.

Joe Harrison, Jr.: But you have.

Barbara Cunningham: But you can. You do not...you did that with Mr. Woodward for a while. You did not sign the ordinance until as such time as you were satisfied. I don't know, your vote would stand as a R-2 and you can't do it with commitments. You have to vote on it as it is presented to you from Plan Commission, so you really can't do it with commitments and I guess if push came to shove if Mr. Wimberg didn't do it you would have approved an R-2 property without anything.

Commissioner Jerrel: Can we defer this until the next zoning meeting?

Barbara Cunningham: You certainly can.

Commissioner Jerrel: Could they enter into...to see if they enter into a covenant and if they enter into it--

Joe Harrison, Jr.: It wouldn't be they. I don't think they are going to do it. It would be him.

John Wimberg: You said that they don't have to sign it, that I can execute this and promise to do it.

Jody Poulson: Why continue it when we are all here stating no? I mean, doesn't that tell you--

Tony Guntel: Doesn't the majority mean anything anymore?

Joe Harrison, Jr.: I'd just vote on it.

Jody Poulson: Just vote now, exactly. I mean, we're not going to sign it. We're telling you now that we're saying no. Why continue it for a further date and have another meeting when we are going to say no?

Commissioner Jerrel: Did Mrs. Wimberg's argument make any sense to you?

Tony Guntel: Yeah, I understand what he is saying.

Commissioner Jerrel: No, Mrs.

Tony Guntel: Oh, Mrs., yes. I understand she loves her home.

Commissioner Jerrel: No, no. I don't mean that part of it. The part of the argument about who would they rent to.

Tony Guntel: I didn't hear who they would rent to. (Inaudible comments made from audience.)

Jody Poulson: I don't want--

Tony Guntel: I don't want a duplex across the street from my house. If I did I would move to the intercity where I could have a duplex across the street from my home.

Jody Poulson: Exactly, we're just fighting because we don't want another family in the home. That's the only thing we're stating. We just don't want a duplex around in our neighborhood. That's just our general fight over it. I understand loving a home. I love mine with all my heart, but our intentions when we grow old we are going to sell it to a family who needs to have five bedrooms and four baths, but right now let us enjoy what we have. They had their time and I understand that. If they love their home stay in your home, but keep it as your home only. Thank you.

John Wimberg: It's 5,200 square feet. I'll execute that restrictive covenant and I'll do what I say I'll do. People...I've been to hearings and I've been in law enforcement and I heard testimony in courts and people will stand up under oath and say anything they can think of. I never get over that.

Tony Guntel: I'm telling you the truth. I live there, I live across the street and I don't want a duplex. If I did I would not have built my home there. I would of moved to the intercity and moved next door to a duplex.

John Wimberg: What does a duplex look like?

President Mourdock: Okay, hold on. That's it. This isn't going to turn into that.

Tony Guntel: That's right. I don't want to argue with my neighbors. If they were sitting on my porch looking at me across the street (inaudible).

Sylvia Guntel: I have another thing to say.

President Mourdock: Last comment.

Sylvia Guntel: My home, you know, we lived in the bottom part of it and then we built the upper. My home is the perfect...I mean, I've got a kitchen, two bedrooms, a bath, a family room downstairs in the old part that we used to live in. Upstairs I've got a brand new kitchen, three bedrooms, two full baths and a half bath. I could very, very easily decide I want to rezone to a duplex too, you know. Our neighbors up on the hill they've got a home 3,500 square feet. They could decide to do that to just because we all the need the money and so we can stay in the neighborhood. You know, that would be wonderful, but I don't want to do that and I am sure that my neighbors above the hill on



the other side of me would say the same thing if I decided that I wanted to make my home into a duplex because, I mean, I have the perfect home to do it. I don't have to do anything.

President Mourdock: Anything else to add?

John Wimberg: So the restrictive covenant didn't get very far or what?

Commissioner Tuley: Doesn't sound like it.

President Mourdock: It doesn't sound like it unless in the motion one of the Commissioners ask that it be included.

John Wimberg: Well, maybe I should withdraw the petition and just seek approval for a variance on my property.

Barbara Cunningham: A variance how, Mr. Wimberg?

John Wimberg: Pardon me?

Barbara Cunningham: What kind of variance? What are you talking about?

John Wimberg: A variance from the AG zoning to permit me to use it as R-2 during the time that I live there or my wife lives there.

Barbara Cunningham: You can't get a use variance. There is no such thing as a use variance. This is the proper body. You're at the proper body for what you're asking to do.

John Wimberg: Well, I am willing to sign the restrictive covenant or execute any proper agreement. What else can I do?

Joe Harrison, Jr.: I think you've said about everything you can say as far as that's concerned.

President Mourdock: It's up to the Board.

Commissioner Jerrel: What's the appropriate motion to cover this situation?

Joe Harrison, Jr.: He could also ask for a...I mean, if he wanted another month he could ask this body for a continuance for another month.

Commissioner Tuley: For the purpose of preparing--

Joe Harrison, Jr.: For the purpose of preparing the restrictive covenant.

John Wimberg: I'd be happy to do that. I am willing to do that, extend that. I'm not trying to make a permanent situation in the neighborhood.

Commissioner Jerrel: As far as the neighbors being here tonight and wanting to come back that happens often. I mean, that happens many, many times. You know, your testimony is a matter of the record. It was a matter of the record in Area Plan. It's a matter of record tonight and it's verbatim, so every word you've said is not...if we don't

make a decision tonight there is no chance of you losing your testimony.

Tony Guntel: But when are you going to make a decision? Whenever everything gets perfect in his degree? The majority of the people in the area say no. Ain't that how or something a little bit how it works of how the majority rules?

John Wimberg: That's not true. The other abutting property owners are not here.

Tony Guntel: They don't care.

(Several inaudible comments made from audience.)

Sylvia Guntel: How many are there?

John Wimberg: Seven.

President Mourdock: Okay. Please. I'm taking a question from Commissioner Tuley, please. Pat.

Commissioner Tuley: The question is, I mean, the line is drawn in the sand. There's no question. We're not going to ever bridge that line. The question is does Mr. Wimberg want to request this Board to continue this for one month so that he may prepare the restrictive covenants as described. That's the question on the floor.

President Mourdock: Mr. Wimberg, only you can answer that question.

John Wimberg: I've offered that. Yes, I'll take that continuance and prepare it to the best that we can to cover this problem.

Commissioner Jerrel: But you have to request a continuance.

Commissioner Tuley: You have to actually request the continuance.

John Wimberg: Yes, I request the continuance.

President Mourdock: Okay. Is there then a motion to accept this for continuance for one month?

Commissioner Tuley: So moved.

Commissioner Jerrel: I'll second.

Commissioner Tuley: This is where...I'm sorry, Richard.

President Mourdock: I was just going to say so ordered.

Commissioner Tuley: This comes in my mind as your first test of doing what you say you're going to do, so you've got 30 days to prepare that legal document.

John Wimberg: Sure, I'm serious about that.

Commissioner Jerrel: That will be communicated to the Fehrenbachers, the Cavanahs, the Clements and the Kapplers?

President Mourdock: That's a very good question. Barbara, we need your expertise on that. Since this continuance is being done and Mr. Wimberg is going to prepare or have prepared some sort of document, does the additional or the contiguous neighbors get renotified as they have in the past on this?

Barbara Cunningham: No, this is notice at the public hearing now. It is not something you're acting on. What you're acting on only is the continuance and that does not mean you're going to accept this document or not accept the document. It means it is just another thing that you're going to be looking at.

President Mourdock: The important thing is he does not have to file additional notices.

Joe Harrison, Jr.: No.

Commissioner Jerrel: But I asked the question will you notify Fehrenbachers, Cavanah, Clements and Kappler since those four adjacent properties are not here and the two Guntel properties and Poulsons are the three that are here. Will you notify them of this?

John Wimberg: Well, I hadn't planned to, but if it is a problem I will surely do it. They are not here. They are not remonstrating. Obviously,--

Commissioner Jerrel: Well, though of what you are going to do.

John Wimberg: I don't have any problem with notifying them. That's a minor administrative detail.

Barbara Cunningham: Will you make that by certified mail?

Commissioner Tuley: Yes, yes.

Commissioner Jerrel: I think that they should be notified so they know that you are going to offer a covenant.

Commissioner Tuley: What she wants...what Barbara had suggested or asks or threw out a suggestion to us, but I would like for that notice to be in certified return receipt so there is proof to this Board whether they came here or not that they did get notice.

President Mourdock: You're speaking of the specific contiguous owners?

Commissioner Jerrel: Yes.

Commissioner Tuley: Yes, the ones that we just named. Cavanah, Fehrenbacher--

Commissioner Jerrel: Clements--

Barbara Cunningham: Wouldn't you do all of them.

Joe Harrison, Jr.: I'd do them all.

Barbara Cunningham: All them need to be notified.

Commissioner Jerrel: Describing the covenant.

Commissioner Tuley: So then it would be all the abutting property owners which include the people who are here tonight. Clements, Kappler...I'll name them by name. Clements, Kappler, Guntel--

Barbara Cunningham: I don't know if those are the same ones now.

John Wimberg: Fehrenbacher, Poulson, Kappler--

Jody Poulson: Can I say one more thing?

President Mourdock: Sure, at the microphone, please.

Jody Poulson: All the other neighbors around us that...we are surrounded by woods. I mean, there is a lot of woods and probably they really don't care because there are woods in between them.

President Mourdock: Well, they are property owners though just as you are.

Jody Poulson: So they were notified of the meeting?

President Mourdock: Yeah, they were notified of the original zoning, sure.

Commissioner Tuley: They'll be notified of the continuance.

Barbara Cunningham: Be notified of the continuance and of a private agreement.

President Mourdock: Even if they own that property and if they live in Bangor, Maine and never visit the property they still receive legal notice.

Jody Poulson: Okay. Now what do we need to do for this meeting? What do you mean a continuance? Is that giving him time to what?

President Mourdock: It's giving him time to put in writing what he said verbally tonight that he would then present to this body with the same request to go to an R-2 zoning, but he is willing to say on a piece of paper here is what I am going to do to make sure that this does not succeed my interest in owning that property.

Jody Poulson: Okay.

President Mourdock: If that's what you're going to say?

John Wimberg: That's correct.

President Mourdock: I mean, something to that effect.

Jody Poulson: Okay, but we're stating tonight we're going to say no. I mean, we're not going to agree to it.

President Mourdock: We understand and you have the right to do that.

Jody Poulson: Okay, so what's this going to...the continuance, what's it going to lead to if we're saying no?

President Mourdock: It will lead to a vote on this action on the meeting on...

Joe Harrison, Jr.: October 20th.

President Mourdock: October 20th.

Jody Poulson: This will be the last meeting?

President Mourdock: October 20th.

Commissioner Tuley: Yeah, don't say that. We would hope as you would hope that it would be the last meeting, yes.

Tony Guntel: Now you're going...whatever he is going to draw up more or less is telling me that you're going to say yeah to that because that is what you are all wanting is that there piece of paper saying, okay, John, now you're going to do this, this and this. We're saying, no, please don't now. Don't let us get a piece of paper here getting it all perfectly looking good to you. If you had to live across the street and lived in the home I lived in and this was going to happen to you would you want an answer now rather than saying, okay, I'll give you another chance? Draw up some more papers and come back. That sounds pretty good to me. Them people are going to have to accept it because I am saying yes. Would you want to be done that way? I don't think so. I'm missing work and stuff so I can come to these things. I can't...I don't have a bunch of money. I'm fighting tooth and nail. Me an my wife both work to take care of the home we've got. If we don't take care of it we sell it and we go get us a littler house.

President Mourdock: Okay. Appreciate the comment. Thank you.

John Wimberg: What the restrictive covenant would mean is that their concern that I would leave a duplex sitting there across from them when I am long gone from the property it would no longer exist so it takes away that concern. That's not a legitimate concern anymore, I do believe.

Tony Guntel: Yes it is a concern. That's--

President Mourdock: Okay, thank you, Mr. Wimberg. We understand what you're saying. We understand--

Tony Guntel: I'm sure you do.

President Mourdock: --these folks probably will not like whatever is worded in the covenant. We understand that. We've accepted your request that we continue this matter for 30 days or until October 20th, so we will then act on that. Again, understand that when you send those out as Commissioner Tuley was requesting it needs to be by certified receipt return mail.

Commissioner Tuley: Yes.

President Mourdock: Okay, thank you.

Charlene Timmons: To return those to the Auditor's Office.

President Mourdock: Yes. Well, the restrictive...yes.

Commissioner Jerrel: The Auditor's Office needs your return receipts after you get them back.

President Mourdock: Any other new business to come before the Zoning Board tonight? I'd look for a motion of adjournment.

Commissioner Jerrel: So moved.

Commissioner Tuley: Second.

President Mourdock: So ordered.

The meeting was adjourned at 8:10 p.m.

***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Barbara Cunningham  
Joe Harrison, Jr.  
Charlene Timmons  
John Wimberg  
Sylvia Guntel  
Tony Guntel  
Gary Poulson  
Jody Poulson  
Others unidentified  
Members of the media

VANDERBURGH COUNTY  
BOARD OF COMMISSIONERS

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member

**Vanderburgh County  
Board of Commissioners  
Rezoning Meeting  
October 20, 1997**

President Mourdock: Good evening. The Vanderburgh County Commission is convened at 7:00 p.m. on October 20th to deal with several zonings that are before us this evening. If you're new to our process we have some agenda over here on the table. Also, because of the recording system, if you wish to address the Commission it is important for you to come to the microphone and state your name and address as we do all of our minutes verbatim. Just for the record, here in attendance this evening we have Barbara Cunningham; Joe Harrison, Jr.; Commissioner Tuley; Commissioner Jerrel; and our Recording Secretary, Charlene Timmons;

**Approval of minutes**

President Mourdock: The first item on our agenda this evening is the approval of our minutes from our past meeting.

Commissioner Jerrel: I would like to move approval of the September 15th minutes.

Commissioner Tuley: I'll second.

President Mourdock: So ordered.

**VC-13-97 David D. Scales First reading**

President Mourdock: The second item for us, we have two first readings this evening to begin the process of these zoning requests to continue through the path, if you will. The first one is petitioner David D. Scales with an address of 4404 Upper Mount Vernon Road. It's VC-13-97. He is requesting a change of that property from C4 to M2 and I would look for a motion of approval on first reading.

Commissioner Jerrel: I so move.

Commissioner Tuley: Second.

President Mourdock: So ordered. Our second first reading of the evening is--

Joe Harrison, Jr.: You might do a roll call on that even though--

President Mourdock: Even a first?

Commissioner Tuley: On first?

Joe Harrison, Jr.: I would just to be safe on both of them.

President Mourdock: Alright. We'll call for a roll call vote then having a motion and a second for VC-13-97 which is 4404 Upper Mount Vernon Road. Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: Commissioner Tuley?



Commissioner Tuley: Yes.

President Mourdock: I vote yes on first reading.

**VC-14-97 Decem Investments, Inc. First reading**

President Mourdock: Second is also a first reading. VC-14-97, the petitioner is Decem Investments. The address is 10287 Wexford Court. That's not correct.

Commissioner Tuley: That's the petitioner's. How about 830 North Burkhardt?

President Mourdock: Yeah, the subject address is 830 North Burkhardt Road. The request on changing there is from C2 to C4. I would look first for a motion of approval on first reading.

Commissioner Jerrel: I so move.

Commissioner Tuley: Second.

President Mourdock: Roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes.

**VC-11-97 John Wimberg Final reading**

President Mourdock: We have three this evening on final readings. The first is continued from last month which is VC-11-97. The petitioner, John Wimberg. The address, 1730 Orchard Road and the request is from AG to R2 with a private covenant. You'll recall last month this came before us and there was some discussion as to whether or not a private covenant would be submitted. Barbara, do you have any updates on this?

Barbara Cunningham: The only thing I might say is it was heard at September 3rd Area Plan Commission meeting and received an no action/no recommendation with two yes and five no and one abstention. It has come back to you...there was a question on utilities and all utilities are available to the site except sewer and this site is met by a private mound dosage-fed septic field bed. It was continued, I believe, for a private agreement.

President Mourdock: Mr. Wimberg is in the audience. Do you have that private agreement or covenant that you had discussed? Yes, and I ask you to be sworn in as well as is our normal practice.

Joe Harrison, Jr.: All those who intend to speak with respect to this petition if they would stand and raise their right hand. Do you swear and affirm that the testimony you're about to give is truth, the whole truth and nothing but the truth so help you God?

Response: Yes.

Joe Harrison, Jr.: Thank you.

President Mourdock: Okay, Mr. Wimberg.

John Wimberg: We have that declaration of covenants prepared now and fully executed by my wife and myself. It has been notarized and we are prepared to record it tomorrow or alternatively leave it with the secretary or the group here to do the recording. I've furnished a cashier's check in the correct amount for the four pages.

President Mourdock: Okay, and just for the record the check needs to go to the Recorder's Office and not the Commission to record this.

John Wimberg: Yes, yes. It's payable to the Recorder.

President Mourdock: Right. Okay, any questions of Mr. Wimberg from the panel?

Commissioner Jerrel: No, let me just take a minute to read it.

President Mourdock: Sure.

Commissioner Jerrel: Okay, the meat of the covenant is in this first part that says:

"Wimbergs agree in covenant that they shall use the subject real estate as R2 zoning only so long as they continue to own the real estate. In the event the property is sold by the owners the owners hereby specifically agree to petition to have the real estate returned to the original agricultural zoning. The owners further agree that the rezoning action shall be completed by Wimbergs prior to any closing upon the sale of the subject real estate."

John Wimberg: Yes, that's correct.

Commissioner Jerrel: Have you...I know this is a private covenant and not connected with us, but are your surrounding neighbors aware of this?

John Wimberg: Well, they were at the meeting when we asked for the continuance and that was the substance of asking for the continuance. They were all notified. The Poulsons and the Guntels did appear here. The others did not choose to do so. I notified them as I provided in that registered letter that the meeting would be held tonight on the 20th which would be a continuance of the September 15th meeting.

Commissioner Jerrel: Sure.

President Mourdock: Since this is the original let me give this back to you, Mr. Wimberg. Any other questions for Mr. Wimberg or, Joe, do you have any comments looking at the document?

Joe Harrison, Jr.: You said the letter, the notice, went out?

John Wimberg: Yes, you have a copy--

Joe Harrison, Jr.: I have a copy of the letter.

John Wimberg: Yes.

Joe Harrison, Jr.: Do you have--

Barbara Cunningham: Oh, Charlene has the return receipts.

Joe Harrison, Jr.: Okay, that's what I was wondering about. Okay. As far as the declaration is concerned the term benefitted property owners, how would you construe that term?

John Wimberg: He points out...the attorney...all of the abutting properties plus my own property are the benefitting properties.

Joe Harrison, Jr.: Okay.

John Wimberg: Is that your interpretation?

Joe Harrison, Jr.: I just wanted to know what yours is.

John Wimberg: Alright.

Commissioner Jerrel: There appeared to be some question when you said benefitting property owners. Would you want to explain what you meant by that?

Joe Harrison, Jr.: The agreement, the declaration of covenants, states that:

“Wimbergs declare that the subject real estate is subject to the following provisions, agreements, covenants, conditions, restrictions which shall run with the land and shall be binding upon Wimberg and its successors and assigns and shall enure to the benefit of the owners of the benefitted property.”

It goes on to say:

“The declaration shall be amended only with the written consent of the majority of the owners of the benefitted property being the adjoining property and the Wimbergs.”

Commissioner Jerrel: Is that essentially--

Joe Harrison, Jr.: I want to know who you believe the benefitted property owners are.

John Wimberg: There should be seven of us.

Joe Harrison, Jr.: Okay.

John Wimberg: Including the Kapplers, the Clements, the Fehrenbachers, the Poulsons, the Guntels, the Cavanahs and the Wimbergs.

Joe Harrison, Jr.: Okay, and those six that you named are stated on the county rezoning affidavit?

John Wimberg: Those are the ones I notified, yes, correct.

Joe Harrison, Jr.: Okay.

Commissioner Jerrel: Is that covenant essentially though we have...I mean, we couldn't order anything done to this.

Joe Harrison, Jr.: No, this particular covenant would run between Mr. Wimberg and his wife and those benefitted property owners which would be those six who he is indicating on here.

President Mourdock: Is it those six owners or the owners of those six properties?

Joe Harrison, Jr.: The owners of those six properties.

John Wimberg: As of September 17th when I last checked the record for the second time, that's true, yes.

President Mourdock: But let's assume that one of them sells their property and sells it to someone else, then their right is going with them?

John Wimberg: That's a legal question, but I would assume that it would because it's the benefitted property that will retain this restriction--

Joe Harrison, Jr.: Yes, that's why this document doesn't refer to any specific individual.

John Wimberg: Right.

President Mourdock: That's what I wanted to make sure.

Commissioner Jerrel: Do you want to see if any of them have any questions?

President Mourdock: Yeah, I will. I'm just waiting--

Commissioner Jerrel: Yeah.

Joe Harrison, Jr.: This agreement though is between John Wimberg and Rose Wimberg and the benefitted property owners. Although you are stating in here that in the event the property is sold by the owners then the owners hereby specifically agree to petition to have the real estate returned to the original agricultural zoning. The owners further agree that the rezoning shall be completed by Wimbergs prior to any closing upon the sale of the subject real estate. Let me ask you this, does that mean that if you and your wife sell...no, let's say if one of you happens to not be around and the other is--

John Wimberg: I know what he meant by that. It was a nice way to put it! We might all get hit by trucks.

Joe Harrison, Jr.: That's right. One of your other family members comes into the property, are you taking this to mean that the rezoning only has to occur after the last of you and your wife decide to sell this piece of property or your family members decide to sell it?

John Wimberg: It would be my wife and I. We're the executors...the people signing the document.

Joe Harrison, Jr.: Okay. The reason I asked that is in the first paragraph it says:

“Now, therefore, Wimbergs declare that the subject real estate is subject to the following provisions, agreements, covenants, condition and restrictions which shall run with the land and shall be binding upon Wimberg and its successors and assigns.”

John Wimberg: Yes, counsel put that in there and didn't discuss it with me.

Joe Harrison, Jr.: Are you saying you don't want that in there?

Barbara Cunningham: No, he didn't.

John Wimberg: As far as what we're supposing to do, no, I don't think I do want that in there. We don't want that in there.

Joe Harrison, Jr.: Okay.

John Wimberg: We're trying to cover our use of this property during the time that we own this property. There was really no discussion.

Joe Harrison, Jr.: Okay.

John Wimberg: I gave the attorney a copy of another--

Joe Harrison, Jr.: I understand. You're saying that as soon as the last of you and your wife decide to sell that property, that's it?

John Wimberg: That's it, yes.

Joe Harrison, Jr.: Not if anybody else gets it in your family?

John Wimberg: No, no. They wouldn't want it and we wouldn't even want the property. We hardly want it now. We do want to live there. It's too big as we discussed. I think that is typical legalese that they put in, all successors and assigns.

Joe Harrison, Jr.: So what you would need to do if that is your intention, you would need to cross out and its successors and assigns.

John Wimberg: Okay, I have no problem with that.

Joe Harrison, Jr.: Okay.

John Wimberg: Even without discussing it with the attorney who prepared this I'll be happy to do that.

President Mourdock: Okay, you know what your intent is that's the important thing.

John Wimberg: Yes.

President Mourdock: Okay. Alright, thank you, Mr. Wimberg. I noticed several others stood at the swearing in. You just heard Mr. Wimberg present new information that was not presented last time. The information that you're going to present tonight we also would appreciate if it is limited to new information.

Sylvia Guntel: I'm Sylvia Guntel. I live at 1731 Orchard Road which is directly across the

street from his home. From what we understood when this was brought up, you know, one of our main concerns was the simple fact of them moving out and using it as rental property for income and living elsewhere. Well, this says nothing about them moving out. I mean, they can move out and rent both units out because as long as they live there then they'll be there to control the situation, but we were under the understanding that they were going to have it said that they had to live there in the home so that they could control the second party that is in the home and this doesn't say that. This states only if they sell, that they don't have to live in the home.

President Mourdock: Okay, anyone else?

Joe Fehrenbacher: My name is Joe Fehrenbacher. I live at 1831 Schenk Road. I was not able to attend the last meeting concerning this because of a death in the family. My concern with this also is just like what was stated. If Mr. Wimberg moves out he has no control over what is taking place on his property in either unit. When I purchased my property at 1831 Schenk Road I bought three lots so I could control what went on on the other two lots adjoining my house. I've got a sizable investment involved in that piece of property and I don't want anything to take away from that property. Having rental property uncontrolled by the owner on-site will do so.

Jody Poulson: Hi, I'm Jody Poulson. I live next door to Mr. Wimberg at 1716 Orchard Road. To my understanding, at the last meeting I had thought he was supposed to send this to us so we had time to read this and for our lawyer to, you know, let us understand what all this says because a lot of words we don't understand what they say. So this is useless to me right now because I have no idea. Also, I mean this is all that we had gotten was when we were supposed to be here in a meeting. I know they had mentioned about other people, like in the subdivision, how come they're not showing up so therefore they, I guess, don't care. They just don't have time. I have spoken to a lot of them. I did have a petition drawn and I do have names. They do care, they just don't have the time to come here, so I would like to show you these names. Also at the last meeting or the meeting before, I'm not sure, Mr. Wimberg did show you pictures of his property, but didn't show the Guntels or our property and so I did take some pictures just so you know about the homes.

Commissioner Jerrel: Thank you.

Jody Poulson: Thank you. That's all I need to say.

President Mourdock: Okay.

Jody Poulson: Thank you very much.

President Mourdock: Do you want your list back here? Yeah, we can add it to the record.

Commissioner Jerrel: Add it to the record.

Gary Poulson: Hi, I'm Gary Poulson. I live at 1716 Orchard Road. I would just like to get some clarification on if something was to happen to the Wimbergs and their kids inherited the property would it still have to be rezoned or could they rent the whole house out as an apartment complex?

President Mourdock: I'm sorry, I missed the question.

Gary Poulson: Okay, if something happens to the Wimbergs--

President Mourdock: Okay.

Gary Poulson: --and their kids inherit the property would it still have to be rezoned before being sold or could they rent the whole house out and not have any control over it?

President Mourdock: If I understood Mr. Wimberg's comment of a moment ago, and don't let me put words in your mouth, but I think I heard you say if both you and your wife were deceased and it went to the kids it would have to be rezoned at that point. That it would not continue on.

Gary Poulson: It would be rezoned at that point?

President Mourdock: Right.

Sylvia Guntel: Is that automatic or is that just if they sold the home?

Commissioner Tuley: Or the change in the wording that Joe asked him about.

President Mourdock: Go ahead, Joe.

Joe Harrison, Jr.: Yeah, I think that is his intent and there would have to be some change in the language in that declaration and it may be that as opposed to striking out some words we may have to have that clarified if that is your intent.

Unidentified: By his lawyer?

Joe Harrison, Jr.: Yes.

Gary Poulson: Who would be the person to get this done though? Would the kids be the ones obligated to do this?

Joe Harrison, Jr.: Well, what would happen is there is going to be an estate opened if, in fact, something would happen to both of them or one or the other, but that's a condition of the property. This agreement runs...it really runs with the land, okay? You would have the right to enforce that restrictive...that covenant against the estate of both of them if they both would not be around.

Gary Poulson: So it would be up to us to petition it.

Joe Harrison, Jr.: Well, if, in fact, it didn't happen right away. If it didn't happen through the estate, then you all could come in and petition to seek enforcement through the estate or through some other means the terms and condition of that document. Again, it would be up to you all to do something not the county, but it would be up to you all to look to make sure that document is enforced or those who succeed to your interest in the property down the road. If you would happen to sell your house they would have the same rights that you have.

Gary Poulson: Would it come back before this Board then?

Joe Harrison, Jr.: What would happen, yeah, at some point what's going to be filed...it's going to be a petition filed with the Area Plan Commission. It would go through that

process again.

Barbara Cunningham: If it's filed for rezoning. There is no automatic rezoning.

Gary Poulson: Right.

Barbara Cunningham: Someone would have to file the petition, the Wimbergs.

Commissioner Jerrel: That's filed in the Recorder's Office relative to this department...to this property. Nobody could just walk in. You have to record your deed.

Gary Poulson: Right.

Commissioner Jerrel: As soon as someone went in to do anything that covenant is there.

Gary Poulson: They would have to go through the whole process again.

Commissioner Jerrel: That's right because that covenant would be...it's just like a lien on a property. The covenant is saying we will do this. That's the way that works. It's just like if one of you wanted to rent your house nobody could really stop you from doing that right now. This is a zoning. You know, someone said a minute ago renting a house out. You know, you have the right to rent your home if you choose to, but in the case of this property the covenant is simply going to be recorded in the Recorder's Office and this is what...before it can be sold or anything done with it that covenant has to be lived up to.

Gary Poulson: Okay, thank you.

President Mourdock: Thank you. Any other new information?

Sylvia Guntel: Can I ask Mr. Wimberg a question?

President Mourdock: Surely.

Sylvia Guntel: My question is why do you have to have this rezoned? You've had these people living there for I don't know...a year or two years already. Why are you going through all the trouble and all this to have it rezoned when you are already making income off of it?

John Wimberg: That's probably a good question.

President Mourdock: You'll need to come to the microphone.

Sylvia Guntel: I mean, if they live there fine, but just...

John Wimberg: We're attempting to legalize the situation obviously. Is it my turn yet?

Sylvia Guntel: Yeah, go ahead.

John Wimberg: Have I answered that? We're trying to legalize that.

Sylvia Guntel: Well, I know, but you seem to be going to an awful lot of trouble--

John Wimberg: I sure am.



Sylvia Guntel: --for people who are already living there and you are already making income on them and no one has really complained about it. We're just complaining about having it rezoned and why not just let it go the way it is and leave them live there? You're still making money. Do you get a tax advantage for having a duplex out in our area? I mean, is there an advantage to having a duplex? Is there a financial gain from it other than--

John Wimberg: It's recommended by the American Association of Retired Persons. It's per this. The AARP speaks and that's my situation since I've been retired 19 years. Accessory apartments. What housing options do you have? Accessory apartments are created by making an apartment in your home with one or more rooms and a separate kitchen. This conversion would provide housing for a family member or a tenant and would allow you to live independently without living alone. These are AARP guidelines.

Sylvia Guntel: Well, I understand that and you guys have been doing that for quite some time now and no one--

John Wimberg: You've said that several times.

Sylvia Guntel: Well, and no one has really objected to that.

John Wimberg: That's not new information, by the way.

Sylvia Guntel: Like I said, my question is if there is nobody complaining about it why are you going to such the trouble unless you have some other future plans for that property like moving out?

John Wimberg: Some ulterior motive?

Sylvia Guntel: Some ulterior motive, yes. I mean, you're already making your income off of it why...?

John Wimberg: We've talked about it--

President Mourdock: Excuse me. The issue here is one strictly of zoning. It is not of motive and as a zoning matter the entire issue comes down to is it appropriate zoning for the area. Any citizen, any property owner including yourself Ms. Poulson, has the right to request a change in zoning at any time to anything. It may be approved, it may not be approved, but why you do it is strictly your business.

Sylvia Guntel: Well, I understand that. I just wanted to know.

President Mourdock: I understand the interest in your question.

John Wimberg: Do I have a chance for some rebuttal?

President Mourdock: Sure.

John Wimberg: The comment on rental value...are you Mr. Fehrenbacher? I didn't hear your name. You're Joe Fehrenbacher? The rental value if we were to move out would be much less than we could sell this home for. The only reason we want the rent is because we want to still live there we pointed out earlier. If we move out we would be happy to sell this property and rezone it as we were supposed to do. Mrs. Poulson commented that she didn't have a chance to read this restrictive covenant and I thought

it was clear at our last meeting that they would not have to sign it and therefore we just drew it up to state what we guaranteed that we would do. That's all I have.

President Mourdock: Okay, thank you.

John Wimberg: If you would like to see this AARP guideline book...

President Mourdock: Members of the Board?

Commissioner Tuley: The only comment, if the Board would so choose to approve this, to ease their minds on if something would happen to both of them I would like the wording changed so that it reflects that if something were to happen to both of you that before it could be transferred to your family or whatever it would have to be rezoned back. If the Board would so choose to approve that then they could withhold the signing. They could withhold the signing of the change in the ordinance until we receive that proper documentation. That would eliminate your question about if something were to happen to them because the way it is worded right now it doesn't really say that does it?

Joe Harrison, Jr.: No. No, it doesn't and that change should be made if that's your intent.

John Wimberg: Is it possible to delete something and initial it at this point?

Joe Harrison, Jr.: Well, I personally would prefer that the wording state exactly what we're saying or what you're saying is that if, in fact, the last of the two of you is not around that the property would then have to be rezoned. I would prefer that it be specific and clarified if, in fact, this Board wants to act on that. Oh, and as far as enuring the benefit of your assigns and heirs, I believe that needs to be deleted as well.

John Wimberg: Yes, we'll do that.

Joe Harrison, Jr.: Because that would not be the case. If you want Mr. Hamilton to call me that is fine.

John Wimberg: Yes.

Joe Harrison, Jr.: You understand, I think, what I am hopefully getting at, but if you want Allen to call and if this Board wants to consider the same that is what I would recommend.

John Wimberg: I understand. I had no idea that it would need to be changed, but that is clear and we can do that. Is the next point then to ask for a continuance or can you vote?

Commissioner Tuley: No, what we've done in the past on something like that is if the Board so chooses then it could be approved subject to the receiving of the property language as outlined by Joe Harrison here. The ordinance would not be signed, therefore it would not be changed until receipt of that.

John Wimberg: We could get that done within a few days.

Commissioner Tuley: Yeah, but I am saying for the benefit of the--

Joe Harrison, Jr.: What we can do though, it can be approved tonight with that language

in there and it has just got to be changed.

Commissioner Tuley: Right.

Joe Harrison, Jr.: Okay?

John Wimberg: That's quite acceptable to me.

President Mourdock: Okay. Another comment here.

John Wimberg: Pardon me?

President Mourdock: A lady wishes to make a comment, I believe.

Jane Fehrenbacher: My name is Jane Fehrenbacher. I live at 1831 Schenk Road. First off I would like it on record that I definitely would not like rental property abutting to our property. We purchased our property out there in the hopes that all of the property would remain as it is and that there wouldn't be rental property. Secondly, I'm concerned that if this is approved that this gentleman would be a vacant landlord, he will not live at the property and watch what is being done at the property and oversee the property which will not have a beneficial effect on all the abutting property owners. You know, if you so choose to approve this I hope that you will put some wording in it that would require him to maintain residence at the real estate if his sole intention is just to be able to generate income in the other apartment. I guess that's all I really have to say.

President Mourdock: Okay, thank you. Mr. Wimberg, do you care to respond to that?

John Wimberg: I thought I made it clear that we intend to live there and the only point we'll rent will be while we are living there. That if we did move away then we would sell the property. It's not appropriate to have it as rental property if we are not living in it ourselves.

Commissioner Jerrel: Right, and that will be reflected in the minutes of the official meeting.

John Wimberg: Yes, we'll change that revision as Mr. Harrison outlined there to delete those successors and assigns and all the legalese that got put in that I didn't know about.

President Mourdock: And to include...go ahead, I shouldn't have interrupted.

John Wimberg: To include our intent to live on the property period or rezone it if we sell it prior to closing.

President Mourdock: So that document that you are talking about would be changed to reflect no successors and assigns. It would be changed to reflect that if, in fact, you move from the property the zoning could revert and that it's not your intention of holding the property and not living there as an absentee landlord.

John Wimberg: Absolutely not. It's economically not a viable alternative to rent that home out for what rental income I would get.

Joe Harrison, Jr.: If I could make one comment and I hate to muddy the water any more, but on the successors and assigns, I think that language should be in there and I'll tell you why right now. Under...if you have in front of you 1.1, Use of real estate. If you

happen to have that, I would propose the following: Wimbergs agree in covenant that they shall use the subject real estate as R2 zoning only so long as they continue to own the real estate. In the event the property is sold by the owners or if the owners, I'd put, cease to own the property due to death or other reason, then the owners or their successors and assigns hereby specifically agree to petition to have the real estate returned to the original agricultural zoning which means that if something would happen to you then your successors and assigns would be bound to petition to have the real estate rezoned.

John Wimberg: Yes, they wouldn't want to live there either.

Commissioner Jerrel: Based upon that covenant with the corrections, I would move--

Commissioner Tuley: Just one--

President Mourdock: One second.

Commissioner Tuley: I need to stop you for one second. I think he agreed that also he wouldn't mind...he would agree to have that changed to own or reside--

Commissioner Jerrel: Yeah, it's in there.

Joe Harrison, Jr.: I don't think Joe read that.

President Mourdock: No, it wasn't there. That's what he said at the microphone, though, that he would be willing to say own and occupied.

John Wimberg: And reside.

President Mourdock: Reside or occupy.

Commissioner Tuley: They shall use--

Joe Harrison, Jr.: Instead of use we'll just put own and occupy.

Commissioner Tuley: Yes.

Commissioner Jerrel: Own and occupy.

Joe Harrison, Jr.: Okay.

Jody Poulson: I just would like you to consider I know there is just a few of us that show up for these meetings, but I do have signatures on there that they are really against this. I wish you would take that under consideration. Thank you.

President Mourdock: Thank you.

Commissioner Jerrel: Does the covenant though...is there anything that is left out of the covenant? You wanted the residency, the change back if at anytime the property owners change and he will reside at the home? With all of the issues that were requested in the covenant, I will move approval when this has been finalized and recorded.

Tony Guntel: It didn't take you long to come up with that.

Commissioner Tuley: Joe, it looked like you were getting ready to say something.

Joe Harrison, Jr.: The only thing, we really can't do a conditional zoning. I would just say based upon those representation--

Commissioner Jerrel: Well, I want to make sure this all happens.

Joe Harrison, Jr.: He is saying it's going to happen right now.

Commissioner Jerrel: Okay.

Barbara Cunningham: He is having it recorded.

John Wimberg: Tomorrow morning.

Joe Harrison, Jr.: But the changes have to be made and you're going to do it.

John Wimberg: Get these executed, notarized and recorded.

Joe Harrison, Jr.: Okay.

Commissioner Jerrel: With that agreement I--

Joe Harrison, Jr.: What he can do is he can initial this tonight with those changes and we just want a clean copy.

John Wimberg: I can do that.

Joe Harrison, Jr.: If there is a motion to that effect.

Commissioner Jerrel: I'll make a motion to that effect that he initial these agreed changes.

Commissioner Tuley: I'll second.

President Mourdock: Okay, there is a motion and a second on the floor.

Tony Guntel: Can I say something?

President Mourdock: Go ahead. There is a motion and a second, so please be brief to new information. You need to come to the microphone

Tony Guntel: You all just agreed to that just (fingers snap) pretty quick. I know that you've had other readings in front of you and what we've talked about here and that, but what we really talked about here tonight is something I don't see how you can decide well, that quick (fingers snap) I'll approve that.

Commissioner Jerrel: We're trying to respond to your...to the issues that you wanted.

Tony Guntel: The issues that I wanted is I don't even want a covenant. I don't want nothing. I want it to stay agricultural.

President Mourdock: Okay.

Tony Guntel: I'm not the one that is wanting anything except for it to stay the way that it is with or without added attractions. Preferably without.

President Mourdock: Okay, thank you.

Tony Guntel: Thank you.

President Mourdock: Okay, there was a motion and second and for purposes of a roll call vote as always since this is an ordinance, Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: I will vote yes, so it is approved.

Commissioner Tuley: You need him to initial that.

President Mourdock: Pardon?

Commissioner Tuley: Have him initial it.

President Mourdock: Oh, yes. You need to initial these changes.

Commissioner Jerrel: Just anywhere.

John Wimberg: Do you want my wife to initial it?

President Mourdock: Yes.

Commissioner Jerrel: Yes, if she would. Just initial. There are three different issues. Down here, too.

President Mourdock: Charlene will make you a copy.

<b>VC-12-97    Action Trailer Sales &amp; Rentals, Inc.    Final reading</b>
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President Mourdock: Okay, next item on our agenda this evening is VC-12-97, Action Trailer Sales & Rentals, 12600 Highway 41 North which is a request from AG to C4.

Barbara Cunningham: Steven Bohleber is the representative for Action Trailer Sales & Rentals in this petition to rezone the property located at 12600 Highway 41 North. This is an 11.71 acre site located at the southwest corner of Highway 41 and Boonville-New Harmony Road proposed for rezoning from agricultural to C4 with a Use and Development Commitment. The petition was heard at the October 1st Area Plan Commission hearing and was recommended for approval with nine yes, zero no and one abstention. The site is located along the Highway 41...is there any remonstrators...Highway 41 North corridor an area planned for commercial and industrial development. It's located just outside the corporate boundaries of the Town of Darmstadt with the corporate limit line adjacent along the west property line of this site. Just inside the Town of Darmstadt and adjacent across the railroad right-of-way west of

this proposed C4 site is the Vanderburgh County 4-H Center. The Comprehensive Plan encourages the use of buffers larger than those required by code. A Use and Development Commitment is included as part of this rezoning which prohibits off-premise billboards on this site with the exception of temporary signs advertising special events for the 4-H Center and TTT Ministries. Those are not considered off-premise billboards, Mr. Bohleber.

Steve Bohleber: Well, just in case there are any questions I want to clarify that.

Barbara Cunningham: The controlled intersection, it's located like I said at Highway 41 and Boonville-New Harmony Road. Highway 41 is a controlled access thoroughfare leaving the only access available to this site from Boonville-New Harmony. This controlled intersection experiences heavy traffic congestion during those periods of special events or activities at the adjacent Vanderburgh County 4-H Center. If commercialization of this area is to occur, the development of any commercial use may require the installation of acceleration and deceleration lanes by the applicant as well as access suitable for large truck traffic. Compliance with all code requirements will be addressed by Site Review at the time of submission of plans for development of the site. The area identified on the year 2010 Conceptual Land Use Map and the Comprehensive Plan is an area of commercial and wholesale development. The proposed use is consistent with the concept in the plan to establish a commercial and industrial corridor along US 41 in northern Vanderburgh County. Surrounding is a rural, agricultural, residential area experiencing a gradual transition to the long planned industrial development along the Highway 41 corridor.

Joe Harrison, Jr.: All those want to speak with respect to this petition, VC-12-97, please stand and raise your right hand. Do you swear and affirm that the testimony you're about to give is true so help you God?

Response: Yes.

Steven Bohleber: Ladies and gentlemen, I represent Mr. Hawes, the owner of Action Trailer Sales & Rental. As Ms. Cunningham pointed out, Mr. Hawes filed this rezoning petition to rezone 11.7 acres on the southwest corner of US 41 and Boonville-New Harmony Road. Mr. Hawes is currently located at 1308 St. George Road on leased property. Because of loss of that lease he is required to relocate. The business does what it says. It sells, services and rents trailers. Mr. Hawes has been involved in this business for a couple of decades plus now. He has three operations in addition to Evansville. One in Owensboro and Terre Haute as well. The Evansville operation does employ 22 people and logically may employ more in the future. The site plan and the previous comments we made to the Plan Commission point out that the brain center, the center of operation of this site, will be close to the tracks near the west property line with access only onto Boonville-New Harmony. It will consist of a building for parts, storage and repairs, offices and sales and showrooms. There is ample room at the site, it provides for future expansion. Parking is not a problem and also the size of the operation will certainly allow any compliance with Site Review requirements, EUTS requirements. My client is willing to do those and do whatever is necessary to make it a safe and viable operation for all concerned. The neighbors have indicated their support. The 4-H Center after consulting with counsel supports this. The TTT Ministries does as well. We know of no opposition. It has not surfaced at any time to me personally or to my client and there were no remonstrators at the Area Plan Commission meeting. We did include a Use Commitment to prohibit off-premise advertising and to make certain there was no misunderstanding about that and also consistent with my client's desire to be a good neighbor even though it may not be absolutely required, we did want to make sure that no one interpreted the periodic and seasonal use of that

property by the 4-H Center and TTT Ministries for temporary signs to be construed as a violation of this covenant so we excluded that type of activity from the otherwise prohibited activities concerning off-premises signage and advertising. Again, it is consistent with the Comprehensive Plan. It will allow us to maintain this viable business in Evansville. With the exception of Commissioner Mourdock, it does come with a unanimous do pass recommendation. Commissioner Mourdock abstained as is customary, I think, for members of this Commission. We would ask that you approve this this evening.

President Mourdock: Okay, thank you, Mr. Bohleber. Questions of the Board?

Commissioner Tuley: Anybody to speak?

President Mourdock: I have just one question. What kind of trailers are these? Are these truck trailer?

Commissioner Tuley: Yes, semi trailers.

President Mourdock: Okay, 18 wheel coal bucket type? Okay. Anyone to speak against this petition? I didn't see anyone sworn in so I see none in the audience. Is there a motion?

Commissioner Jerrel: I'll move approval of the rezoning of the property for Action Trailer from--

Commissioner Tuley: AG to C4 with a Use--

Commissioner Jerrel: Yeah, VC-12-97 from what to what? Let me get it correct.

Commissioner Tuley: AG to C4.

President Mourdock: From AG to C4.

Commissioner Jerrel: AG to C4.

Commissioner Tuley: Second.

President Mourdock: For purposes of a roll call vote, I will say so ordered, but first, Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes, so petition is approved.

<b>VC-10-97 Hughes A. Simmons Final reading</b>
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President Mourdock: Okay the next item on the agenda is--

Barbara Cunningham: Carolyn McClintock is the representative for owner Hughes Simmons in this petition to rezone his property located at 429 North Red Bank Road from



R4 to C4. This is a 1.18 acre site located on the east side of Red Bank Road just south of Hogue Road. This petition was heard at the August 6, 1997 Area Plan Commission hearing and recommended for denial with eight no votes and no yes votes. On August 11, 1997 the applicants filed an amended petition which included a Use and Development Commitment limiting use of the site to mini storage units covering not more than 8,000 square feet of surface area. The petition, because it was amended, was reheard by the Area Plan Commission on September 3, 1997 and was recommended for denial with one yes and seven no votes and one abstention. In your packets tonight you do have the Evansville Urban Transportation report as of August 15th. Red Bank Road at this site is a narrow rural residential street. Because of the topography of the site and adjoining land the existing drive does not afford clear viability of oncoming traffic in either direction. Commercial use of this site will increase the potential for traffic conflicts. The site is surrounded by residential zonings and uses. In March 1997 the Board of Zoning Appeals approved a portion of this site for installation of 185 foot monopole cellular antenna and an unstaffed accessory service building within the existing R4 zoning classification. One of the factors cited during the hearing for the approval of the cellular antenna was the hilly terrain and the limitation on the possible use of this site because of the need to limit traffic entrances and exits from this site. Commercial traffic at this location is a safety concern which must be addressed. The Comprehensive Plan designates this area for residential use. C4 is not an appropriate classification as a buffer to residential development. This site is in a stable residential neighborhood just outside the city limits completely surrounded by residential zonings and uses with the exception of the monopole that is on this property which is not a zoned property it's a special use. The Comprehensive Plan discourages spot zoning. It also calls for the preservation of the neighborhood residential environment through excluding incompatible uses and providing buffer areas between residential and commercial uses. The C4 heavy commercial district is considered incompatible and is inappropriate adjacent to the residential development on all four sides. The applicant's submitted site plan was reviewed by Site Review on August 4th and did not receive approval. The amended plan was submitted but never reviewed because no representative was present at Site Review so there is still concern regarding aisle and turning radius in addition to the access, but you're not approving the site plan you're approving the zoning classification.

Commissioner Jerrel: I have a question.

Barbara Cunningham: Sure.

Commissioner Jerrel: What can you do with R4?

Barbara Cunningham: You can build apartments.

Commissioner Jerrel: What else?

Barbara Cunningham: I don't have my code. Joe has his code. That's just about...R4 is residential. It's a residential use.

Commissioner Jerrel: But you could use it for apartments.

Barbara Cunningham: You could use it for apartments. That's what it is zoned for and it's adjacent to Mr. Simmons'...I believe he owns the apartments to the south.

Carolyn McClintock: That's correct.

President Mourdock: Joe, do you want to do the honors here?

Barbara Cunningham: It could not be used for a commercial use, Bettye, if that is what you are asking.

Commissioner Jerrel: So the only logical use would be more apartments?

Barbara Cunningham: It could be apartments or it could even be a lesser use. It could be duplexes, it could be single family even, you know, but it could be a residential use and a residential use would be acceptable.

Commissioner Jerrel: Where are the existing apartments?

Barbara Cunningham: To the south.

Commissioner Tuley: Just to the south.

Commissioner Jerrel: Right there?

Commissioner Tuley: And to the west, I guess.

Commissioner Tuley: What's the R3 up at the top? What is that?

Carolyn McClintock: Pardon?

Commissioner Tuley: What's that R3 up there at the top? I mean, what location is that?

Carolyn McClintock: That is at the corner of Red Bank Road and Upper Mount Vernon. That is the property that is currently listed for sale by Prudential.

Commissioner Tuley: The church? Oh, for sale.

Carolyn McClintock: Yeah, it's vacant.

President Mourdock: Okay, before we get into this any further since Joe is occupied, all those speaking for or against this petition please raise your right hand. Do you solemnly swear that the testimony you're about to give is truthful as you know and do you swear to God that it is truthful and factual?

Response: We do.

Barbara Cunningham: You can do group home or sororities and fraternities.

Commissioner Jerrel: Group homes?

Barbara Cunningham: Yeah, except most group homes are exempt now by the State of Indiana so there are very few.

Commissioner Jerrel: Group homes, apartments--

Barbara Cunningham: You could do sorority houses...residential uses. They are all residential uses.

Commissioner Jerrel: Okay.

President Mourdock: Okay, Ms. McClintock, please proceed.

Carolyn McClintock: Thank you. Good evening, my name is Carolyn McClintock and I am here this evening to represent Mr. Hughes Simmons in the rezoning of 429 North Red Bank Road. Mr. Simmons is the owner and developer of this property. He is here this evening to answer any questions that Commissioners might have that I can't answer. This is Mr. Simmons. We are requesting a rezoning of 429 North Red Bank Road from R4 to C4 with a Use and Development Commitment. This Use and Development Commitment restricts the use of this property for the construction of mini storage units only not...the mini storage units are to not cover more than 8,000 square feet of the surface area. Mr. Simmons purchased this property in 1977. He and his partners, William Simmons and Dr. Crowley, developed the Lakewood West Apartments immediately to the south. They do have and will continue to have a large investment in this neighborhood and Mr. Simmons only interest is to continue to improve the area and to enhance the neighborhood property values. I brought some photographs of the Lakewood West Apartments and I'm sure that you all were out there, but just to remind you that this is a very quality development and that these apartments are cared for in a very meticulous manner. This is the same kind of quality development and care that Mr. Simmons would propose for this adjacent property. The primary objection to this rezoning has been the concerns regarding the traffic on Red Bank Road. The property is currently zoned R4 and will be developed into apartments if this rezoning is not approved. Twenty-four apartment units will generate 48 trips per day. I have a the plot plan that was prepared for the apartment development. I'm now going to provide you with a copy of a letter from MINI SYSTEMS, INC. which states that Mr. Simmons should expect a weekly traffic count of approximately six cars or one car per day entering and exiting the mini storage units. The mini storage units would clearly generate much traffic than any kind of apartment development. I also have with me this evening a copy of a letter from Steven Hahn who is a professional engineer and land surveyor. This letter was sent to Barbara Cunningham after the Site Review Committee and I would like to read from that letter dated August 5, 1997:

"During a visit to the site I observed that from my car parked in the temporary entrance I could clearly see the oncoming traffic and be seen by the traffic. The sight distance extends north to the four way stop at the intersection of Hogue Road. The sight distance to the south extends beyond the bottom of the hill. I've enclosed a topographic map from the County Surveyor's Office to show the site and the surrounding area."

If you read further in the letter you will read that his findings indicate that this project will not create a traffic hazard at this location. We would like to address the improvements that Mr. Simmons is proposing to be made to this site as a result of this rezoning and I have some site photos that can show you what the site currently looks like. Mr. Simmons has committed to riprap the bank that is adjacent to the property owners on Hogue Road. He has further committed to have the roadway blacktopped and construct and maintain an attractive green space including white pines to buffer this development from Red Bank Road. In looking at the topography of this area the neighbors to the north will not have their sight block because of the 12 to 15 foot drop from the rear of their property to this development. So if they look out their backyard, which we've stood and looked out, they are not going to see...they're not going to be looking at mini storage units. They are going to look well above the mini storage units. There have been no objections at any of the previous meetings from any of the adjacent property owners. I would like to provide you this evening a copy of a letter signed by adjacent property owners which I have attached a site plan that has their names highlighted on the site plan to show you that those name on the site plan correspond with the signatures that I'm providing you

on this letter. Every property owner which owns abutting land have affixed their signature to this document. I would like to ask for those people in the audience here this evening who that are in favor of this petition to please stand. Thank you. Okay, briefly to recap our presentation and then we'll be happy to answer questions that you may have, Mr. Simmons owns the adjacent property and this development will only enhance his property and the surrounding area. Two, if this is not developed into mini storage units that are adjacent to this property Mr. Simmons will construct 24 apartment units on this site which is already zoned for that purpose. Three apartments will generate 48 trips per day. Mini storage units will generate one trip per week. Mr. Simmons has gained approval from the neighbors for this development and will work with them and the Area Plan Commission to meet all necessary requirements including the Site Review requirements mentioned by Ms. Cunningham. Finally, there are 600 apartment units in the vicinity of this development and most of them or many of them could use these mini storage units. We look for this to be a very local traffic kind of project with those units being used by individuals that live in those 600 units. We look forward to the opportunity to address any questions that the Commissioners may have this evening.

President Mourdock: Questions of Ms. McClintock?

Commissioner Tuley: None right now.

President Mourdock: None right now? Anyone wishing to speak opposed to this petition? State your name and address.

Marge Basden: Good evening, I'm Marge Basden and I'm with the West Side Improvement Association and I am also a neighbor. I reside at 5335 Nunning Court. West Side Improvement primarily objects to this petition for the reason that we feel it's spot zoning. It's moving commercial zoning so much closer to a residential area. This particular spot is in a position where Red Bank Road comes up to a hill. It's very...you cannot see across the hill at the four way stop. This property at the last meeting was...we were told it was 500 feet from that intersection. My husband measured. It is 225 feet from that intersection which is not far enough. Red Bank Road at this point carries traffic to Schnucks and that whole shopping area from the whole northwestern Vanderburgh County; St. Joe, St. Wendel. All those people come across this narrow Red Bank Road. The traffic many times, we travel that going back and forth to our home which is right close by, is backed up all the way down to Mr. Simmons apartments, so consequently anyone trying to enter or exit these storage buildings would be blocked...either blocking the traffic going on Red Bank and school buses use this road and many other things. Now I don't know who the neighbors are who are consenting to this, but the area that they're speaking of where the railroad track and the other property is not even within sight of this area because you go down a bluff and around a curve and across the railroad track and it's not even, you know, near. Secondly, they said Mr. Simmons would be a good neighbor. He doesn't live in the neighborhood. At one point we were having some problems with another rezoning in the area and we called his office at the apartments and asked if he would come down and speak on our behalf and we were told by his representative that he did not want to come because he might have a petition to come before you and that he didn't want to alienate this body. I wouldn't say he is a particularly good neighbor to the neighbors in the neighborhood. The apartments across from this are student housing. I don't...for USI and I'm really not too certain how many of those students would be using storage buildings. Again, our primary objection for the West Side Improvement is the fact that we would like to keep neighborhood residential and we, you know, we don't want the commercial to come any closer. Those are our basic objections. If there are any questions I will try to answer them.

Commissioner Jerrel: Well, as I read the minutes I thought the minutes were referring to traffic. You don't have any problem with the traffic then from apartments?

Marge Basden: I don't see how they can put 24 apartments on that lot. If any of you have seen the lots.

Commissioner Jerrel: Look over there.

Marge Basden: I pass it every day. It already has this tower on it, you know?

President Mourdock: Already has what?

Marge Basden: It already has this huge--

Commissioner Jerrel: Cellular.

President Mourdock: Oh, tower.

Marge Basden: --cellular radio tower on there and that's surrounded...there is a building and that's surrounded by fence.

President Mourdock: Okay.

Marge Basden: As far as the neighbors on the hill looking out their windows and seeing nothing but nice things and not seeing this I don't understand how you can look out your window and something be down right in front of you and when you're looking down you can't see it.

President Mourdock: Okay, thank you.

Bill Basden: Not much left for me to say. I'm Bill Basden, I represent the West Side Improvement.

Commissioner Jerrel: How do you spell your last name?

Bill Basden: B-a-s-d-e-n.

Commissioner Jerrel: Okay, thank you.

Bill Basden: We live right close, probably 500 feet or so from this property. We don't think we need any more traffic on the road. She spoke a while ago about the distance from Hogue Road down to it. It's certainly not 500 feet. It's 225 feet because I measured it if that makes a difference on the thing being approved or not approved. It is a residential area and needs to stay that way. There are some nice homes in the area and we would like to see the traffic cut down if it could be and it certainly won't be if we keep getting commercial units in there.

President Mourdock: Okay, just clarify a question and I believe this came up at Area Plan, Barbara, but it's my understanding under the current R4 zoning if an apartment building were built on that property as shown on this plat these types of mini storage buildings could be added at the time to serve that building without any--

Barbara Cunningham: Internally with the building, that's what we talked about, but not to rent out to the people across the way or anything.

President Mourdock: So that was the difference?

Barbara Cunningham: Yeah, I mean, it's like any building. They can have storage for their own tenants, but I don't think that's--

President Mourdock: Okay.

Barbara Cunningham: Not storage for your own tenants--

Unidentified: But there are people that would use it.

Barbara Cunningham: There are that would use it.

President Mourdock: Sure, okay. Carolyn, you started come to your feet there. Do you have more to add?

Carolyn McClintock: I just wanted to reiterate a couple of points. One, I wanted to clarify the mini storage units would generate one car per day and I said one per week. We had not mentioned the 500 feet. That was mentioned by someone else who was making a presentation earlier, so I just wanted the record to show that we provided to you the study done by Steven Hahn who is a professional engineer and land surveyor and did not get into the number of feet just his sight distance study. I think that this is one of those very difficult situations because you are looking at a primarily residential use that happens to be in a commercial zoning classification and that's why we were very careful about submitting a Use and Development Commitment that restricts the use of this to these mini storage units that we see being used very locally by individuals that live in 600 apartment units and that will not generate traffic from the east side of Evansville to go out along Red Bank Road to these mini storage units. The property owners that signed this petition that I provided to you this evening are the property owners immediately adjacent and to the north including those to the north of this particular property that we are asking you to rezone.

Unidentified: Northwest and south.

Carolyn McClintock: Well, I just wanted to make sure that they knew that those people above the units are all included on that petition.

President Mourdock: Any questions? Alright, thank you. Yes, ma'am.

Carol Tenhumberg: Good evening, I'm Carol Tenhumberg. I'm the manager of Lakewood West Apartments and I'm employed by Mr. Simmons. I live at the apartments. I'm there practically 24 hours a day. The residents who live in one portion of our apartments look directly out their back windows and balconies and patios to that site. In the past, I've been there almost six and a half years now, they have looked at a vacant weed filled lot. Although Mr. Simmons keeps it mowed regularly it's not an attractive place. When the tower was put up Mr. Simmons went to a great expense to put an attractive fence around that. Not like the normal chain link fence, this is an expensive wrought iron fence. He has a lot of plans to not only put shrubs, but nice flowers and a nice sign comparable to what we have at Lakewood West Apartments. There are many residents in our apartments who have expressed interest in storage area close to their apartments which would make this very convenient for them. On a daily basis I am in and out of those apartments five to ten times a day running to the bank, running errands for the apartments, my own personal errands and I would say that the traffic problem is not going to be where that entrance is. The traffic problem is at the bottom of the hill

between Golden Towers and Lakewood West Apartments because we've got people flying down that road and that's where they all meet at. The area up there you're just not going to have that speed that you do at the bottom of the hill, so I don't feel that the safety factor is going to be a problem there and I do think there is a very great deal of interest in storage units adjacent to the apartments. It would be so convenient for not only our residents...there are not just students at Golden Towers. There are faculty who also live there also so they may need storage areas also. You know, I am very much in favor of this and I think a lot of our residents would appreciate the fact and it is going to be an attractive place. If you drive by Lakewood West Apartments you will see that we do a very good job of keeping things up, picking up all the trash from the fast food restaurants around the area and keeping things looking nice at Lakewood West and we will do the same for these mini units. Thank you.

President Mourdock: Okay, thank you. Yes, Mrs. Basden.

Marge Basden: As a point of information, the demand for these mini storage buildings I'm certain this is a good business to be in, but there are mini storage businesses adjacent to these apartments to the south. There is a huge complex of them right there in a commercial area already. I don't understand, you know, why there is that great of demand for them that they need to be moved into a residential area.

President Mourdock: Okay, thank you. Any other questions from the Board members? Okay, we need to proceed.

Commissioner Tuley: I'll move for approval of VC-10-97 as outlined from R4 to C4 with the Use and Development Commitment.

Commissioner Jerrel: I'll second.

President Mourdock: For the purpose of the roll call vote, Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: I vote yes, so the petition is approved. Are there any other issues to come before the Board this evening? Hearing none, I'll look for a motion of adjournment.

Commissioner Jerrel: I'd like to move.

Commissioner Tuley: So moved...second.

President Mourdock: So ordered.

The meeting was adjourned at 8:10 p.m.

***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Barbara Cunningham  
Charlene Timmons  
John Wimberg  
Sylvia Guntel  
Joe Fehrenbacher  
Jody Poulson  
Gary Poulson  
Tony Guntel  
Jane Fehrenbacher  
Steve Bohleber  
Carolyn McClintock  
Marge Basden  
Bill Basden  
Carol Tenhumberg  
Those unidentified  
Members of the media

**Vanderburgh County  
Board of Commissioners**

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member



Vanderburgh County  
Rezoning Meeting  
November 17, 1997

The Vanderburgh County Board of Commissioners met in session for the purpose of hearing rezoning issues this 17th day of November in the Commissioners' Hearing Room of the Civic Center Complex at 7:02 p.m. with President Richard E. Mourdock presiding.

**Approval of minutes**

President Mourdock: We'll call the Rezoning meeting of November 17, 1997 of the Vanderburgh County Commission to order. Item A in our packets are the approval of minutes from the October 20, 1997 meeting. Do we have a motion for approval?

Commissioner Jerrel: I would like to move approval of the minutes of October 20th.  
Commissioner Tuley: I'll second.

President Mourdock: So ordered.

**First reading - VC-15-97, The Referral Company, LLC**

President Mourdock: First readings this evening, we have VC-13-97. David D. Scales is the petitioner. The address is 4404 Upper Mount Vernon Road and the requested change is from C-4 to M-2.

Commissioner Tuley: Are we going to come back to first readings after we do finals? We have two first readings.

President Mourdock: Isn't that what I just said? Oh, you're right. I said first readings, but, yeah, I had them labeled incorrectly. Okay, yeah, the first reading is The Referral Company, LLC. It's VC-15-97. The address, 3401 North Green River Road and the request is from C-4 to AG and that, again, is on first reading.

Commissioner Jerrel: I would like to move approval on the first reading of VC-15-97, The Referral Company.

Commissioner Tuley: I'll second.

President Mourdock: So ordered.

**First reading - VC-16-97, Alan Corressel for Alma Corressel**

President Mourdock: The second petition this evening for first reading is VC-16-97. The petitioner is Alan Corressel who is the attorney-in-fact for Alma Corressel. The address, 5801 Oak Grove Road and the request is to change from AG to C-4.

Commissioner Jerrel: On first reading I would like to move approval of VC-16-97, 5801 Oak Grove Road from AG to C-4.

Commissioner Tuley: Second.

President Mourdock: So ordered.

**Final reading - VC-13-97, David D. Scales**

President Mourdock: Okay, final readings we have two this evening. Barbara, I'll turn to you if you would on VC-13-97.

Barbara Cunningham: More commonly known as 4404 Upper Mount Vernon Road. Carolyn McClintock is the representative for David Scales in this request to rezone a .33 acre site adjacent south of his current business located at 4404 Upper Mount Vernon Road from C-4 to M-2 to allow expansion of his machine shop. The proposed rezoning expansion area is on the south side of Upper Mount Vernon Road between Helfrich and Red Bank. Mr. Scales is proposing to enlarge the size of his M-2 zoned site to allow expansion of the machine shop adjacent north of the site. The machine shop has existing access onto Upper Mount Vernon Road. The only access to this rear site is from a private access drive which serves as a commercial access to the adjacent catering business. Compliance with all code requirements will be addressed by Site Review upon submission of plans for the use and development of the site. The machine shop requires one parking space for each two employees of the largest working shift, plus one for each company vehicle. Any new parking must be paved with a hard and sealed surface. The site lies within an area designated in the Comp Plan as industrial along the south side of Upper Mount Vernon Road. The present upgrading in classification and use, because it is completely surrounded by commercial and industrial, is consistent with the overall goals with the Comprehensive Plan which encourages limiting heavy industrial and commercial uses to those areas where they are appropriately buffered from residential development.

President Mourdock: Joe.

Joe Harrison, Jr.: All those who wish to speak concerning this petition please stand and raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Carolyn McClintock: I do. Good evening, I'm Carolyn McClintock and I am representing David Scales who is the owner of Lively Machine Shop. Mr. Scales is requesting rezoning of this property from C-4 to M-2. This is a third of an acre at 4404 Upper Mount Vernon Road. Mr. Scales wants this rezoning to expand his current machine shop business. This site is within an area designated industrial and is consistent with the overall Comprehensive Plan. All surrounding properties are commercial and industrial and I have brought a map that shows the site and the surrounding sites and we do have them marked thus. The other is a photograph of the machine shop site. You can see that commercial located around it. Mr. Scales has taken the time to talk with his neighbors and see if there are any concerns that they have regarding this expansion or his existing business and he found no one that had a problem with it. We had no remonstrators at the Area Plan Commission meeting and we don't see any here this evening, so Mr. Scales is here and we'll be happy to answer any questions that the Commissioners have this evening.

President Mourdock: Thank you, Carol. Any questions of the petitioner or Ms. McClintock? In that case, I'll accept a motion.

Commissioner Jerrel: I would like to move approval of VC-13-97 to rezone 4404 Upper Mount Vernon Road from C-4 to M-2 for the owner, David Scales.

Commissioner Tuley: I'll second.

President Mourdock: Since this is an ordinance, a roll call vote. Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: I vote yes, so the petition is approved.

**Final reading - VC-14-97, Decem Investments, Inc.**

President Mourdock: The second issue for the evening, VC-14-97. Barbara.

Barbara Cunningham: Ken Newcomb...Carol, you can take both of those, yeah. Ken Newcomb is the representative for Decem Investments in the petition to rezone a .851 acre lot at 830 North Burkhardt Road from C-2 to C-4. This is part of an existing C-2 zoned site known as Waterford Place Commercial Subdivision which was initially rezoned in 1990. Decem Investments is requesting a step up in zoning from C-2 to C-4 to allow construction of a new Sonic Drive-In restaurant on this site. The site is located at the northwest corner of Burkhardt Road and Columbia Street with Tudor Lane forming the rear frontage of the site. The surrounding properties north, south and west are all commercial. Across Burkhardt east of the site remains agricultural at this time, but is projected in the Comprehensive Plan as an area of future commercial development. Vanderburgh County is currently working on improving Burkhardt Road to a four lane facility to accommodate the existing and projected traffic volumes. No direct access is permitted onto Burkhardt and none is proposed per Sonic's site plan. Access is planned from Tudor Lane, a proposed new north/south street which would link Columbia Street and Vogel Road per the plans approved as part of Waterford Park Subdivision. The Comprehensive Plan calls for this portion of Burkhardt to be developed as a commercial corridor.

President Mourdock: Joe.

Joe Harrison, Jr.: All those wishing to speak with respect to this petition please raise your right hand. Do you swear and affirm that the testimony you're about to give is true and accurate so help you God?

Response: Yes.

Unidentified: I think Barbara has said most of it. The Sonic Drive-In...most fast food restaurants will comply under a C-2, but because we have outside sales is why we need to go to a C-4 zoning. It would normally, I guess, comply with most of the other fast food restaurants.

President Mourdock: Okay. Just state your name for the record.

Ken Newcomb: Ken Newcomb.

President Mourdock: Any questions of Mr. Newcomb or Barbara?

Commissioner Tuley: Nope.

Barbara Cunningham: C-4 is not inconsistent with this area.

Commissioner Jerrel: I'd like to move that VC-14-97 be rezoned from C-2 to C-4. The property address is 830 North Burkhardt Road and the petitioner is Decem Investments, Inc.

Commissioner Tuley: Second.

President Mourdock: So ordered except a roll call vote. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes, so the petition is approved.

Ken Newcomb: Thank you very much.

President Mourdock: Okay, thank you.

Commissioner Tuley: Thank you, Ken. See ya.

President Mourdock: Any other business to come before us this evening?

Commissioner Tuley: Just the signing of them.

President Mourdock: Okay, I would look for a motion of adjournment and we will sign some documents.

Commissioner Tuley: So move for adjournment.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

The meeting was adjourned at 7:13 p.m.

***Those in attendance:***

Richard E. Mourdock  
Bettye Lou Jerrel  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene M. Timmons  
Barbara Cunningham  
Carolyn McClintock  
Ken Newcomb  
Others unidentified  
Members of the media

**Vanderburgh County  
Board of Commissioners**

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member

**Vanderburgh County  
Rezoning Meeting  
December 15, 1997**

The Vanderburgh County Board of Commissioners met in session for the purpose of hearing rezoning issues this 15th day of December in the Commissioners' Hearing Room of the Civic Center Complex at 7:05 p.m. with President Richard E. Mourdock presiding.

**Call to order**

President Mourdock: We'll call the Zoning meeting of the Vanderburgh County Board of Commissioners to order. The first thing on our agenda on December 15th is the minutes of the meeting of November 17th from our rezoning session. Is there a motion to approve those minutes?

Commissioner Tuley: I will so move.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

**First reading - VC-17-97, Curt and Eric Burwell**

President Mourdock: We have several first readings tonight. First reading VC-15-97. The petitioner...oops, I'm looking at the wrong one. Scratch that number, I did the same thing I did last month. Well, I've misplaced them already. Okay, on first reading tonight we have VC-17-97, which the owner is Curt and Eric Burwell, the petitioner I should say. The address is 400, 410, 500 North Burkhardt, and the Sater property which is directly west of 410 North Burkhardt. The requested change in zoning is from AG to C-4. Is there a motion or any comments regarding this on first reading?

Commissioner Jerrel: I move approval on first reading.

Commissioner Tuley: Second.

President Mourdock: So ordered. The...do we need a roll call on first reading?

Joe Harrison, Jr.: That's fine.

Commissioner Tuley: I don't think we do, no.

**First reading - VC-18-97, MJM Properties, Inc.**

President Mourdock: The second petition before us this evening also on first reading, is VC-18-97. The petitioner is MJM Properties, Incorporated. The address is 6001 Old Boonville Highway. They're requesting the change from AG to M-2. Any comments or is there a motion on that particular petition?

Barbara Cunningham: The only thing is you have one that is not on your paper tonight that has been on your agenda called The Referral Company, common address 3401 North Green River. What they have asked for is a continuance.

President Mourdock: Okay, let's take care of VC-18-97 first.

Commissioner Jerrel: I'd like to move approval of VC-18-97 on first reading.

Commissioner Tuley: Second.

President Mourdock: So ordered.

**Final reading - VC-15-97, The Referral Company**

President Mourdock: Okay, now Barbara, I'm sorry.

Barbara Cunningham: I thought the look to me was what was going to come next. I'm sorry.

President Mourdock: No. We had one that was supposed to be on that's taken off?

Barbara Cunningham: It was on tonight, and you have a letter of continuance, I think.

President Mourdock: Right.

Barbara Cunningham: Or we got one.

Commissioner Jerrel: Yeah, I'd like to...I talked to them and they sent a letter. The Referral Company LLC, 3401 North Green River Road that had been requesting a C-4 to M-2 is asking that this be deferred.

Barbara Cunningham: They were going to go from C-4 to AG.

Commissioner Jerrel: Oh, well it says here M-2.

Barbara Cunningham: The Referral Company on Green River Road was going to go down in zoning from C-4 to AG.

President Mourdock: It may be just a typo. On the actual staff report it does have it C-4 to AG.

Commissioner Jerrel: That's wrong?

Barbara Cunningham: Yeah.

Commissioner Jerrel: Okay, so anyway, with that correction this is deferred.

President Mourdock: That's a push for a deferral?

Commissioner Jerrel: Yes.

Commissioner Tuley: I'll second.

President Mourdock: So ordered.

**Final Reading - VC-16-97, Alan R. Corressel, attorney-in-fact for Alma M. Corressel**

President Mourdock: Okay, then on final reading this evening we have VC-16-97. Barbara, do you want to fill us in on that one please?

Barbara Cunningham: Since Jim is the only one here, I guess what I need to tell you to give you some information on the Corressel property and the petition to rezone the 18 acres on Oak Grove north of Vogel and south of Vogel and all the way down to Columbia. Mr. Morley is here to explain to you that the Corressels have indicated their willingness to cooperate with careful planning and development of the roadway system by filing with this rezoning petition a Use and Development Commitment which provides for dedication of 30 foot of right-of-way for Columbia Street and an agreement to pay half the cost for the construction of the street across the property when the street is extended. We project this to be an area of commercial development. This also has been submitted to the Area Plan Commission as a subdivision and at that time it was brought up by Evansville Urban Transportation that they had some questions about the road network, and I requested that Ms. Zigenfus as to the Sub Review Committee, that she attend tonight's meeting to explain this information and Rose had...well, she had a meeting in Warrick County so she was not sure if she was going to be here. I think, and Jim might not agree with me, I think I owe it to you, I'm not going to do transportation, but I think I need to tell you some of the questions that she had. If you recall, you all adopted a transportation network as such for the whole area and in reality it did not address lot lines or property lines or anything like that. It was lines on a paper that could be adjusted with the developments that went in and with the area. At Sub Review Ms. Zigenfus...let me pass this on and I'll show you the thing...outline, and I'm not going to make a big deal of it. I just feel we need to get it on the record, Jim, that this was a concern of EUTS. If you note the purple line that's a property that you have before you for rezoning and that's for this. The line that goes to the side of it, there's a kind of almost parallel piece that's to the right on your map, that is owned by another, the Hirsch family. That is where the line on the map you adopted projects Metro to come up. Also, Columbia was supposed to be projected all that way to go into the apartments in that area. What I want to tell you, and Ms. Zigenfus is not here, is she had requested that you all be appraised of the idea of Metro and perhaps maybe the time to do that is when this comes back in.

President Mourdock: Question for you.

Barbara Cunningham: Okay.

President Mourdock: Is the plan for Metro that EUTS is talking about not the same plan that shows up on the drawing from Morley that is the last page of the packet, where it shows the proposed roadway? Is that not the same location as Metro that EUTS is speaking of?



Jim Morley: (Inaudible comments made away from microphone.)

Barbara Cunningham: No, you mean where your street is going in, Jim? Here let me show you. It's not, and I don't want to really want to make a big issue of this because I think that should be a transportation issue. I think we also should know. This is where the road is projected to take care of these properties.

President Mourdock: Right.

Barbara Cunningham: This is the subdivision plat that's been filed, and it will go from where Columbia is all the way up to--

Commissioner Tuley: Oak Grove?

Barbara Cunningham: --Oak Grove, and here's Vogel in between. This is the next long narrow...about this size isn't it, Jim, a piece of property that would be adjacent to it?

Jim Morley: Yeah.

Barbara Cunningham: And about there is where Metro...but that's what we want to tell you, and Jim will tell you this, too. The location of Metro is just a line on a piece of paper right now. The fact is that Metro has not been...it's not been...the subdivision has not been recorded, so we don't have anything south of where Columbia would be. We have a commitment through the zoning to put in Columbia at some time, but we don't have anything else really that is to the south of that. I don't want to--

President Mourdock: Okay, time out.

Barbara Cunningham: Okay.

Commissioner Mourdock: Time out for a second, before this gets any further. Joe, do you want to do the swearing in thing here?

Joe Harrison, Jr.: Yeah. All those who wish to further testify in connection with this matter, this petition, please raise their hands. Do you swear from the testimony you're about to give is true and accurate so help you God?

Jim Morley: I do.

President Mourdock: Okay. Jim Morley, you wish to address some of these points?

Jim Morley: The...well, basically the 18.2 acre parcel request for a C-4 is in keeping with the adjoining properties that have been rezoned. There is one remaining parcel. All the areas along here had been divided up many years ago in an estate division where various Hirsch heirs got about 330 feet in width by a half mile long. These properties have come in as Ryan had one, Reinhardt had one, and now the Corressel's. Then to the east of there, Decem has zoned there. Marcellus Hirsch has not come forward yet to seek rezoning, but essentially it's surrounded by C-4. At the time that we created the plat of Metro, which you see on the little exhibit down there below, we had picked an

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appropriate distance off of Stockfleth Ditch, a County regulated drain, in order to have a lot that would back up to the ditch and then front on a road. We worked with the property south of the section line...south of the center of the section, a half mile north of Lloyd Expressway and a half mile south of Oak Grove Road. We created a plan, Metro Group basically floundered. Sales weren't very good in the area. They've sold some lots now, and Heilig-Meyers and others are out on portions of it, and a golf store. All of the roads were never built. Columbia was never built. Metro was never extended to the north because there was nothing to extend to. The plans were for it to get north to some kind of Columbia. Columbia is a limited east/west connector. It can't go all the way west to Green River Road because of Glick's Carriage House Apartments block that passage way. So it's only a local server, but we knew that we needed a network of north-south roads to connect within that, so Columbia was put on the map for plan and intended as a distribution system within that square mile area. What you see on this drawing of the actual Metro location, it lines up with the Marcellus Hirsch property and therefore...and EUTS had written a letter saying, well, we've got it down the center of the Corressel property and that doesn't line up. Why don't you put it down this edge? Well, that doesn't line up either, and I guess that was kind of part of what brought some of the confusion on and which Barbara's staff had said we didn't attempt to create detail maps of exactly where these roads were. Nor were they even intended to mean that's where the road would go. Just that we're after a north/south route through there--

President Mourdock: Okay, time out--

Jim Morley: --so there we are.

President Mourdock: Okay. With the last couple comments in mind, the plat plan that is on your banner head, shows the roadway right smack in the middle of this long stretch--

Jim Morley: Yes.

President Mourdock: --that is the petition?

Jim Morley: Right.

President Mourdock: Is that what you think the ultimate plan will be?

Jim Morley: Yes, yes.

President Mourdock: You think it really will be offset roughly 500 feet from Metro?

Jim Morley: Roughly.

President Mourdock: Well, maybe 300?

Jim Morley: Roughly 200 feet, I think, 200 or 300 feet.

President Mourdock: From here to there, whatever distance that is?

Barbara Cunningham: Two hundred, yeah.

Jim Morley: This is 330 all the way. If you pave that... approximately 300 feet, yeah.

Barbara Cunningham: We probably should say, Jim, Metro is not part of this legal description or of this petition.

Jim Morley: That is correct.

Barbara Cunningham: But we just thought you needed to know this since you know the overall plan.

President Mourdock: Playing what if. If the Hirsch property to the east of this comes in next week for zoning, what are you going to do? What's the timing? In other words, I can't see putting a road here and a road here, necessarily. I guess maybe it's not inherently bad, but is that leading to good development?

Commissioner Tuley: (Inaudible.)

President Mourdock: Yeah, that's what I say. If these two came in together it would be.

Jim Morley: Personally, I don't...I think the Marcellus Hirsch property is extremely limited and technically worthless because a regulated drain runs 75 feet either side and even if you grant a reduction to 25, you've still got 25 plus the full width of the ditch which is about 25, so you've still got a 75 foot swath out of it that really impacts that property. Personally, I think that if this road ever gets up there, that's good. We certainly are up to Virginia now. If we get Columbia connected out to Royal that's good. We have that commitment. If we get this road connected all the way to Vogel and on through to Oak Grove, we've got distribution that way. I think this property cut by the ditch, it's not only low, there's a ditch. Personally, if you want my honest opinion, I think he'll slice the property in two. He'll take a little piece out of there. He'll take a little piece out of there. He'll take a little piece out of there, and he'll come up to the north end and figure out a way to take a little piece out of there. What we'll have is this road right here, because when we start to move...and that's the part of the problem as Barbara was talking about. When you draw it on a map, you don't always recognize the physical features you run into like a drain and you know how terribly expensive it is to put them in a culvert or to reroute them. It's very expensive. So I think if this comes up to here, I think it would be nice if the developer of this property if we could encourage maybe an alignment. But if not an alignment, then the proper distance to offset is a minimum of 125 feet. There's nothing wrong with an offset if it's at least 125. What that allows you to do...remember this is a local service. This is not your main, you know, this is not Royal. We're very close to Royal.

President Mourdock: Burkhardt Road was just once a two lane county road.

Jim Morley: Well, yeah, and Royal dead-ends into something up

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here and then this is even--

Barbara Cunningham: This is not where we wanted Royal to begin with.

Jim Morley: No.

Barbara Cunningham: But we got it there and it works fine.

Jim Morley: I think truthfully, and it's serving very well.

President Mourdock: Okay.

Jim Morley: It's not... I don't think it's a problem.

Barbara Cunningham: The only reason I brought it up is so you're not told afterwards that you should have been told this.

President Mourdock: Right.

Jim Morley: One of our problems with the area of Columbia is it's been dropped off on a couple of other rezonings that didn't quite get to the ditch on Decem and now we've got to kind of work on trying to solve and getting it connected.

President Mourdock: Obviously, if and when all this happens, if at least recent past practice is maintained whatever development goes in there by way of road, that developer is going to be doing that road anyway. So it's not a matter of where...they'll be coming back to the County looking for us to acquire right-of-way or anything like that?

Jim Morley: No.

Barbara Cunningham: (Inaudible comments made away from microphone.)

Jim Morley: Yeah.

Barbara Cunningham: Columbia, I think, is something that we need at some time.

Jim Morley: Sure.

President Mourdock: Okay, any other questions?

Commissioner Tuley: Any other speakers?

President Mourdock: Any one else wishing to speak to this issue? Is there a motion for approval?

Commissioner Jerrel: I'll move approval.

Commissioner Tuley: I'll second.

President Mourdock: Since this a final zoning, we need a roll call vote for VC-16-97. Commissioner Tuley?

Commissioner Tuley: Yes.

President Mourdock: Commissioner Jerrel?

Commissioner Jerrel: Yes.

President Mourdock: I vote yes. The petition is approved.

Jim Morley: Thank you.

President Mourdock: No other issues before us this evening, motion for adjournment.

Commissioner Tuley: So moved.

Commissioner Jerrel: Second.

President Mourdock: So ordered.

The meeting was adjourned at 7:22 p.m.

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***Those in attendance:***

Bettye Lou Jerrel  
Richard E. Mourdock  
Patrick Tuley  
Joe Harrison, Jr.  
Charlene Timmons  
Barbara Cunningham  
Jim Morley  
Others unidentified  
Members of the media

**Vanderburgh County  
Board of Commissioners**

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Richard E. Mourdock, President

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Bettye Lou Jerrel, Vice President

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Patrick Tuley, Member

Recorded by Charlene Timmons. Transcribed by Gary Tucker