

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

Regular meeting held at 4:00 P.M. in Room 301
Civic Center Complex - Administration Building
Evansville, Indiana

March 13, 2008

ROLL CALL

Ms. Stevens: I would like to call the March 13, 2008 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Mr. Brooks, Mr. Colter, Mr. Jain, Mr. Jeffers, Mr. Korb, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Ms. Stevens

Members Absent:

Dan Adams, Roger Herrin, Mike Lockard

Area Commission Staff Present:

Bradley G. Mills, Executive Director; Blaine Oliver, Assistant Director; Janet Greenwell, Zoning Administrator; Donna Holderfield, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel

APPROVAL OF MINUTES

Ms. Stevens: Is there a motion to approve the February minutes? (Motion was made and seconded.) The minutes of the February meeting are approved.

REZONINGS

Ms. Stevens: For rezonings, it takes seven affirmative votes to recommend approval of a petition or seven negative votes to recommend denial of a petition. In the event that there are not seven votes, it still goes forward to the City Council or County Commission with no recommendation.

The Area Plan Commission has established the following guidelines to be followed for both rezonings and subdivisions. Mr. Mills will begin each presentation. As each case is called, the petitioner and the remonstrators who intend to testify will please stand and be

sworn in at the beginning of the process. If your name is not on the petition, those who plan to testify need to please fill out the sheets in the back of the room. All testimony must begin by stating your name and address for the record.

The petitioner or person appearing for the case being heard will have a maximum of 10 minutes for the presentation of evidence, statements, and arguments in support of the petition. Then there will be a total of 10 minutes for the remonstrators. This testimony will be followed by a five minute rebuttal period for the petitioner as a summation of the case. Any request for additional time must be voted on by the Board. A timer will be used to help enforce the time limits. Both petitioners and remonstrators should organize their testimony to adhere to these guidelines.

When there is a group of individuals remonstrating against a petition, we strongly encourage the group to designate a spokesperson. If it is necessary for more than one remonstrator to speak, the group should meet out in the hall before the Area Plan Commission discussion of the agenda item, to coordinate the information presented, so that each speaker addresses a different issue of concern. In order to expedite the meeting, remonstrators should refrain from repeating the same concerns already expressed by another speaker about a particular development proposal. The Plan Commission appreciates the cooperation of all participants with these guidelines.

If the Commissioners have questions about issues that we feel have not been sufficiently addressed by the applicant, we have the option to request a continuance until the information needed to sufficiently answer our concerns is available or provided by the applicant or technical staff.

The City rezonings considered tonight will be heard by the City Council on April 14, 2008 at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on March 18, 2008 at 5:00 p.m. in Room 301.

I would like to welcome Dewey Colter to our Commission.

Now, let's move on to the first rezoning petition on the agenda tonight.

Mr. Harrison: Mr. Mills, do you swear or affirm that the testimony you will give tonight is true and accurate so help you God? (Mr. Mills has been sworn in.)

CITY REZONINGS

Docket No: 2008-6-PC R-2008-2 Petitioner: Evansville-Vanderburgh Airport Authority
Address: (Complete legal on file.) 7801 Bussing Drive
Nature of Case: Petitioner requests to rezone from agricultural, R-1, C-4 and M-2 zones to an AIR zone.

Mr. Mills: Evansville-Vanderburgh Airport Authority District is requesting to rezone the approximately 1300 acres of airport-owned land from Agricultural, R-1, C-4, and M-2 to

AIR. The acreage lies between Highway 41 & east of Highway 57, north of St. George Road. This petition was continued from last month's meeting. In 1977, Area Plan Commission and City Council passed new zoning ordinances which created an "AIR" district classification, and adopted standards for development within the new AIR district. In 1980, Vanderburgh County adopted similar ordinances. A large part of the Evansville-Vanderburgh Airport Authority District was already in existence at that time. The Airport Authority has purchased additional land and expanded their boundaries in recent years, adding areas in Vanderburgh County outside the original boundary. In 2007 the City of Evansville annexed all the area currently owned by the Airport Authority into City limits and combined all the individual Airport land into one large parcel. By zoning ordinance, all agriculturally zoned land shall be zoned R-1 upon annexation into the City of Evansville. This is a request to rezone all of the Airport Authority land to the AIR classification, removing the existing legal nonconforming status of the original land and adding the new, annexed land to the overall site. This site is designated on the Comprehensive Plan Future Land Use Map as an area of governmental and institutional use. This rezoning of all Airport Authority land to the AIR classification is consistent with the Comprehensive Plan. Allowed uses in the AIR district include mixed governmental, institutional, commercial, industrial, service and recreational uses as approved by the Airport Authority. Any new or changed use of Airport land requires approval of the Evansville-Vanderburgh Airport Authority Board and approval of Site Review Committee prior to issuance of permits.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Olsen: My name is Gene Olsen. Bob Working, the Airport manager, regrets that he cannot be here tonight. He is in a conference in Washington. I would like to reiterate some of what we talked about in the last meeting. The Airport started with a couple hundred acres back in 1928. We have grown to now over 1,500 acres. As we acquired the property, the way the land was zoned remained. The Airport currently has a mix of land use and zonings that we would like to convert to AIR. This effort is kind of intended to be a housekeeping exercise. It is not going to change any of our existing plans or development programs that we already have in place. Nothing that we intend to do with the property will change before or after. We do have an Airport master plan in place. The biggest project in there is a 2,400 foot relocation of the runway to the northeast, the same alignment. That is really to make the airport more useful and increase the margin of safety for the aircraft that are already using the airport. We currently have a situation where a couple of our airlines cannot depart from our runway with full loads during the winter when they have to use anti-ice and during the summer when it is hot out because of the obstructions that INAUDIBLE....That project will not be impacted by this zoning change. There were some issues discussed at the last meeting regarding some compatibility issues. We have had several meetings with one of our neighbors. It turned out that it seems like the main issue is lighting. Over the last several weeks, there have been a few phone calls and a couple meetings where we tried to see exactly what the issue is and what we can do about it. I am happy to report today that all the lighting that is mounted on

poles around the warehouse will be angled down as much as 45 degrees. The tenant of that warehouse is exploring the ability to purchase and install shielding on all the lighting on the exterior of the warehouse. We are trying to be as proactive as we can. I would be happy to answer any questions.

Ms. Stevens: Thank you. Are there any questions?

Mr. Jeffers: I was out of the country at the last meeting. So I didn't get to hear your presentation. I have a couple questions. Is all the property owned by the Airport?

Mr. Olsen: Yes it is.

Mr. Jeffers: Does the Airport own any property other than what is shown in this rezoning?

Mr. Olsen: There is a parcel to the west of 41 that we hope to take title to very shortly.

Mr. Jeffers: Will you be coming back to ask that to be zoned AIR?

Mr. Olsen: Honestly, I don't know at this time.

Mr. Jeffers: You don't own any property north of Petersburg Road, west of 41?

Mr. Olsen: No we don't own any of that.

Mr. Jeffers: Eastern Airlines owned it at one time. Would the rezoning of this to AIR result in the improper zoning designation of any existing uses within the area?

Mr. Olsen: No, I don't believe it would.

Mr. Jeffers: So AIR allows restaurants and hotels?

Mr. Olsen: Yes it does, to my knowledge.

Mr. Mills: It does not.

Mr. Jeffers: So you are asking for this to be rezoned to clean everything up to make it all consistent with your uses, yet the zoning of AIR would make the existing hotel, restaurant, whatever is there in C-4 become non-conforming.

Mr. Mills: We have a few items with the rezoning that are going to have to be addressed in the ordinances and make some ordinance changes that we are going to bring back at a later date. That is something we have already discussed with the Airport Authority.

Mr. Mills: Was that discussed at the last meeting?

Mr. Mills: No.

Mr. Jeffers: INAUDIBLE

Mr. Mills: It is not in my opinion dirtying it up. It will have a couple items that will be legal non-conforming. But it will all be Airport, which is what we have requested of the Airport Authority to do.

Mr. Jeffers: Have you read through all the uses that are allowed under AIR?

Mr. Olsen: I briefly read through that. I am not claiming to be an expert on that.

Mr. Jeffers: I am not either. It was surprising, petroleum, boat storage, chemical packaging, manufacturing fungicides and insecticides, lead oxide, acid, fertilizer, metal smelting, manufacturing and storing explosives. So I would ask you as a homeowner, if you would find any of those things objectionable within a couple 100 feet of your home.

Mr. Olsen: Well, I most likely would. I would like to say that I am a neighbor in pretty close proximity of the Airport. We didn't craft the AIR zoning ordinance or code. It seems to be the zoning code that fits best with what we do. We are open to the County modifying that zoning ordinance for whatever it feels appropriate. Our biggest concern and the reason we were interested in the property on the west side of 41 was that the biggest thing incompatible with Airport uses was residential. You can see from the maps that the Airport has a sizable chunk of its property that is zoned residential. That is exactly what we want to avoid. The Airport has been there since 1928. The community is starting to grow around the Airport. The last thing you would want to see is a residential property on an Airport. So that is what our purpose is, to try to consolidate.

Mr. Jeffers: But the Air Board controls all that property within that red line that you are asking for in the rezoning. So they wouldn't allow residential development within there regardless of the zoning. You mentioned you are a neighbor. I live 100 feet from that red line over there. INAUDIBLE PORTIONS....So I understand now what some of the residents, there are 10 existing R-1 subdivisions that I count right here. If you had a child going to school at Oak Hill, how close to that school, how close would you feel comfortable storing explosives?

Mr. Olsen: I am not an explosive storage expert. So I can't answer that question.

Mr. Jeffers: Just a gut feeling.

Mr. Olsen: I can't speculate on what if's. I can tell you what our plan is for the property. Currently that property is fairly close to a runway end and that is really where you are going to see more noise. The runway is slated to scoot northeast of there. So it will be closer to the middle of the runway which will tend to move those types of activities away from that area.

Mr. Jeffers: You just currently built the storage facility in close proximity to Oak Hill Middle School. That is why I am asking these questions. INAUDIBLE.... I just wonder how close those lots are that are available for building. I guess where I am headed with this, you do have available to you a use and development commitment. I would simply like to see a buffer zone committed around the periphery of some these areas currently agricultural zoned and used so that there would be no unsafe activity taking place within the designated footage of the residential homes or the school. I'm sure you can understand that, living in the area yourself.

Mr. Olsen: I can tell you that we currently don't have any plans to build facilities that are engaging in the activities that you mentioned. We do have an Airport master plan and it was developed over a year and a half process. It did involve public input. One of the things I would like to point out is that before we take any steps, we have a video security project we are getting ready to kick off that will involve a couple cameras on the exterior of the terminal. We have to go through an environmental analysis before we can do that. It is a federally required process. Before we do any of the development that is in our plan, we are going to have to have an FAA approved environmental assessment. That study process involves examining 23 different environmental factors. But more importantly is that this process involves a very significant public input process. We have to conduct public workshops and hearings. So this is not the last time that anybody has the chance to talk to the Airport Authority. We welcome input from anybody at any time. We are not out there trying to INAUDIBLE...We have to operate an airport and that is our goal first and foremost. I know there is a trend nationally for people to have an airport that is established and people live near it. There are some things already existing in Indiana state law that really protect the airport. But regardless of all that, we want to be a good neighbor. We welcome anybody's input or questions.

Mr. Jeffers: I appreciate all that. The Airport has been a good neighbor. I have no complaints. I have no reason to doubt you or any member of the Airport. Likewise, I wouldn't want to, if there was a situation due to defense or national security where ammunition or explosives had to be stored in a trade zone. I would have no qualms about that because it would be necessary. But right now is the last time the public has or this board has to impose any use and development restrictions. Once you get the zoning, that is it. We can appeal to you and yet if the Air Board wanted to build a storage facility close to one of these property lines, there is no way that the public could prevent them from storing what is allowed to be stored in there if we don't get a use and development commitment now. That's all I am asking for, a commitment in writing as a condition.

Ms. Stevens: To be clear, Mr. Jeffers, in that use and development commitment we specifically put your address, is that part of that?

Mr. Jeffers: I would say within so many hundred feet of the perimeter abutting or existing...

INAUDIBLE SPEAKER

Mr. Olsen: I can tell you the way we interpret state law, we could do those things today. We don't have any need or desire to do those things.

Ms. Stevens: What you are saying is you could do the uses that are already there, whether we give you the AIR zoning or not, based on the way it is currently zoned.

Mr. Olsen: If it supports the commercial operation of the Airport.

Ms. Stevens: I have a question. I wonder what progress you made at all with the use and development commitment or did you just talk to neighbors and deal with their concerns and not address the use and development commitment?

Mr. Olsen: The main thrust of our efforts in the last month was to find out what the objections of the neighbors were and then to address those.

Ms. Stevens: And none of this came up, the concern about the potential uses?

Mr. Olsen: Not with any of the neighbors that we spoke with.

Mr. Korb: The first question is, I want to address what Mr. Jeffers was talking about with regard to the property which is Hamilton's Golf Course to the west. Those were questions we asked them because I saw no need to have that zoned AIR, just keep it as a golf course. That was our request as Commissioners, for them not to come back to ask for that to be zoned AIR knowing we would have a problem with it for the same problems that Mr. Jeffers just listed. So my first question is, what are the real advantages if we rezone this AIR? I know it is uniformity, but that doesn't impress me. It is more of a convenience thing and I get that. But when you go AIR, you are throwing everything but the kitchen sink as to what is able to be put in there. So while we want to make this uniform, I don't think we see this as a huge emergency to get this done. Now is the time for us to be talking about it. So my question is, you said you can put everything in there that you want. To me, the most aggressive is M-2 that you have now.

Mr. Olsen: We have an M-2 across the street to the south. But we don't have any plans to do heavy manufacturing of that type. When you look at the land that we own and the master plan we have for the future, then the existing development we have, we have about nine acres where the old terminal sat that is open. We have a few acres just north of our east/west runway, between the runway and Dairy Queen that are open. But that is already designated for hangars. We had about 92 acres. We have an obligation with the FAA to make the area closest to the runway to keep it aeronautical related. When you look at the rest of the property, there is about 92 acres available for development. When you look at the property off the end of the runway, it looks like a big open space. But that is all going to be required for either the runway itself or taxi ways associated with it, or relocation of surface transportation infrastructure. INAUDIBLE...and then the relocation of the Indiana Southern Railroad.

Mr. Korb: That would be my second point. We have no reason to question the integrity of the current board of directors or administrators out there. I think it is a common sense thing if we could all sit down and say these are the things we want to see crossed off the list that are very concerning to us. And you would say, well you would never do that anyway. I think that would warrant future meetings. A lot of the things Mr. Jeffers mentioned are concerning. The final thing is, was this your idea as the Air Board to do AIR? And your reasoning at that time was? Did you not hear any alarms going off of that fat rendering is a real concern? I would be happy to give you some of mine and you could render that for me.

Mr. Mills: We did bring this up. It is at our request. Our issue is that our interpretation is that the Airport Authority is to comply with our zoning ordinances. Mr. Olsen's comment is that they can do what they want anyway. I don't want to get into a legal battle. But it is our interpretation that it needs to be in compliance with our zoning ordinances and as development goes out into that area in R-1 and agricultural, it needs to be zoned appropriately for industrial type uses, if those are going to go into place. We personally weren't too concerned with the buffer area because if you look at the map in front of you, you have a buffer of a railroad that goes all along the east property, which separates you from all the residential over there. Then along the north where the residential is, you have Highway 57. Mr. Olsen, do you plan to build anything east of the railroad or north of 57?

Mr. Olsen: INAUDIBLE....the alignment that the railroad has now,but we need to relocate the railroad track east and kind of northeast around where the future end of our runway is going to be. But then it has to tie back in to the existing alignment.

Mr. Mills: So with the relocated airport, it is going to be to the far east of your property in the future?

Mr. Olsen: In order to fit the runway in, it will stop just about at Oak Hill Road.

Mr. Mills: But you won't have any factories at the end of the runway? So you won't really have any structures that will be in that location?

Mr. Olsen: INAUDIBLE....called a runway protection zone, and that is an area on the ground that is intended to keep the flight path clear for the aircraft. There is a residential subdivision on the current photograph displayed. We will be bringing the runway in closer to that neighborhood. Then we are going to be having to redo the intersection of Millersburg and Oak Hill and we are going to have to do something about Oak Hill Road because it will have to be closed where it is now. But we don't know exactly what that is yet because we have to go through the environmental process.

Mr. Shetler: As the Airport is beginning to commercialize a lot of the properties, what is happening to the earnings that come off of the rental of the properties? Is it going to offset our ticket prices for the airlines or is it going into the County treasury?

Mr. Olsen: In a way it is going towards your ticket prices. All the land that we are developing right now that has the Berry Plastics warehouse was acquired with federal assistance back in the 60's and 70's. When you buy property with FAA money, they put strings on it that last forever. If you are going to use that property for something else, you have to get a release from them. It is an official process where you give them a legal description of the property, what you are going to do with the property. That is what we did. We converted the use from aeronautical to industrial. Then we promise in there that the revenues that we get from that go directly to the Airport's operating budget. So because of our budget structure, we have different sources of revenue and that is usually not enough to make the Airport run. So the airlines make INAUDIBLE.... So whatever money we can earn from a non-aviation source offsets the airlines.

Ms. Stevens: Are there any other questions? Are there remonstrators?

Mr. Shively: My name is Les Shively. I represent Joseph and Joann Jarboe who live at 2701 Pineview Court. Let me bring you up to speed from where we were last time. We asked for the continuance to develop a dialogue with the Airport. The Air Board's attorney, Mr. Wallace, contacted me to get this ball rolling. Mr. Wallace requested that Mr. Working talk to the land owners directly without the lawyers being present. I said fine, keep me posted because we really want to come to an understanding or agreement. We want it reduced to writing. Mr. Working had a family matter and it delayed his ability to do that. The meeting did occur. Mr. Jarboe was present at that meeting and is here. At the end of the discussion, there were representations made of Mr. Working. When a request was made to put it in writing, they said they would not. I asked Mr. Wallace yesterday to please talk with his client to see if he can put these commitments in writing. I have heard no response. The fact of the matter is, the AIR district is an industrial classification and as Mr. Jeffers noted, it allows manufacturing and commercial. The manufacturing alone allows 130 manufacturing uses. It seems a starting point for a use and development. The first place to start is with their development plan and put that to use. That goes a long way to alleviating a lot of concerns and might even help them down the road as they try to get state and federal approval for things they do to advance air service in this area. We are not trying to encumber the air service. We have a problem with them right now. They have put in a warehouse facility not too far from my clients and near Oak Hill School, which has outdoor lighting. My clients' back yard looks like Goebel soccer field at night. I don't think it was done intentionally. But it is not too uncommon when we do commercial development that we ask that the developer put something in about screening of lighting. If this came before you this evening and I was representing XYZ Development Corp. and said we wanted to do a blanket industrial park with 1,500 acres in the center of all these residences and don't want to make any written commitments, you would have to contain your laughter. I don't think there were any bad motives. But boards change. Mr. Olsen may not be here tomorrow. But I don't see why written commitments can't be made. This property is technically in the city. That was not an involuntary annexation. That was voluntary. So it goes to the City Council. Most of the people who live around here that are affected are not city residents. So the Council may hear from remonstrators, but they are not their constituents. This is a zoning question where you have to protect these people. I could go on all evening and talk about the concerns. But a buffer, incorporating the

master plan? One thing we have heard here this evening, there are railroad tracks close by and we are asking what happens if you move the railroad tracks? And you say you don't want to remove the tracks because it is too difficult. But did we think a year ago the Airport would be in the golf course business? Things change. That is why when we do things of this nature, especially 1,300 acres, it is basically going to an industrial park classification. Air transportation has not really grown in this area. One day maybe the Airport says they need to pare down a little and decide to sell this property. It is ready-made for an industrial park. I don't think it is going to happen, but it could. But if it is not going to happen, we feel relatively certain all they want to do is be able to continue providing good air service, then let's put it in writing in a use and development commitment. As Mr. Mills says on behalf of this Commission, he believes the Air Board, notwithstanding the fact that they are governmental agency, are subject to the local zoning ordinances. So like any other developer, part of those ordinances is use and development commitments. So we ask you to please delay this, not take any action. I think you will do the right thing for people in this community who have homes around here. If what we have heard here from Mr. Olsen is true and accurate, it is not going to encumber or affect the Air Board in providing good service and expanding their facility. So we ask that you continue this and send a message to the Airport that says we are not going to move this forward to the legislative body until we see some type of written use and development commitment.

Ms. Stevens: Thank you. Are there any questions?

Mr. Colter: Just to clarify, the meeting that was held between Mr. Working and your clients, it stated that they are not going to or couldn't afford to move the railroad tracks?

Mr. Shively: Didn't say they couldn't afford. INAUDIBLE..... He simply said the railroad is not very cooperative in relocation of its current tracks and facilities and we shouldn't worry about it because the railroad probably wouldn't cooperate.

Mr. Colter: I am not with the railroad. I just happened to take time since I am new. I took a look at the Airport master plan. I have met with Mr. Olsen. I wanted to know what is happening. They have a very extensive master plan. They have had one for many years. I sat down and went through it the other day, the plan that the staff currently has on file. I would say they do quite a bit of work of analyzing what they are going to do in the future. The master plan I saw looks at the proposal of can they move it, will they move it. That is to be seen, but it is at least under consideration. I am a former economic developer and one of the things I look at is what is going to grow in this county and this area and this Airport is under a constraint for aircraft that is going to support growth of industry. That free trade zone needs a longer runway. It needs to be moved. It is an obvious factor, at least to me. I know from experience that they are going to be constrained at the Airport by the runway safety zones. They have lateral clearances they have to worry about. So when we start talking about 1,300 acres, by the time they pare down all that has to be in no building line and whatever, they are going to be somewhat constrained. Plus, they are limited by height. I think Mr. Olsen told me they hold public hearings and invite the public to participate and look at these plans which hopefully gets around to all the neighbors out

there. I will I agree with Mr. Jeffers rendering plants are the most unsavory item to be smelling. I wouldn't want one by me either. Did I hear that staff is looking at analyzing the uses within certain classifications?

Mr. Mills: We were looking at making some modifications to the ordinances. Part of that would be to potentially allow restaurant and hotel which is not allowed in the AIR classification. Other things we were looking at would be signage requirements. It is possible that it would be pared down if the Airport says they don't want to do any fat rendering, it would be fine with taking that out. That could be an option. We are open to suggestions in that manner.

Mr. Shively: Mr. Colter, I think you are correct. A good place to start with a use and development commitment, if they have this plan, incorporate it so it is connected with the land use, which this body has the authority to regulate. I think that is a great place to start. We are not here to talk about the ability of this facility to provide appropriate, safe and economically viable air service. We are talking about other things that aren't related to air service that could go here under the AIR classification.

Ms. Stevens: Thank you.

Mr. Olsen: I would like to make a couple quick comments to sum up. Regarding the railroad track, I think maybe there is a bit of misunderstanding because we do have a plan. We do know that we are going to relocate our runway by what is shown in our master plan. We have to relocate the railroad. But the railroad in the location where Mr. Shively's clients live is approximately in about a 20 foot depression that was made the last time it was relocated back in the 60's or 70's. It would be cost prohibitive to relocate the railroad track in the vicinity of where his clients live. But the area to the northeast where the runway relocation is going to occur is pretty much of an at grade situation and it is at least financially feasible to do that. Mr. Working is not privy to those conversations, but Mr. Working is entirely right in that INAUDIBLE..... I would also like to say that my earlier comments about my opinion, and I am not an attorney, but the Airport Authority Enabling Act basically says that we will do anything that is compatible with developing and operating the Airport. One of the things we will see as we try to iron this out is that there are conflicts between the zoning codes and the Airport Authority Enabling Act. The Airport Authority act says we can do restaurants and hotels on the property. The Airport Authority has the ability to levy property tax operations. We don't do that. We haven't done it in like 23-25 years. We make everything we need to make to run the Airport off the income that we earn. We do have a property tax levy that we use for capital improvements ... INAUDIBLE... But the operation of the Airport INAUDIBLE... I hesitate to agree to write all kinds of language that is going to restrict what the Airport Authority can do in the future. Yet, we have no interest in fat rendering plants or anything like that. What I don't want to do is have actions that we take today tie the hands of the Board members in the future to limit our ability to earn whatever money we can earn through operating. The railroad issue, we really can't relocate it by his clients' house.

Ms. Stevens: Are there any other questions?

Mr. Jeffers: First of all, I would like to apologize for bringing up fat rendering because obviously it just gave everyone an opportunity to turn this into a jovial affair and avoid the issue that I am really striking at. Now we are hearing about closing roads, moving railroad tracks, etc. The fact is, what I was concerned about is the area north of 57, east of 57, not where the runway expansion is going to occur, not even associated with the runway expansion. I understand when you do your runway expansion you close Oak Hill Road, one of the main arteries north of Evansville. But when you do that and you expand the runway, I realize there is not going to be a fat rendering plant at the end of the runway. But that doesn't preclude you from going into the current platted lots and property you are seeking to develop right now in the trade zone in building a warehouse immediately behind Oak Hill School and then storing in that warehouse some of things I listed such as lead oxide and explosives. Now you can laugh about the fat rendering. I am sorry I brought it up. Then you can go over to the northeast side of Highway 57 in that agricultural land that you now want to zone AIR, which is not anywhere near your runway, and you can do what you want with it. You already have a dog food plant up the road. It was there when we built our house. I smell it every night when the wind is right. But I am not worried about that. I am worried about the manufacturing and storage of explosives, fertilizers, things like that. Then when you look up here north along Heinlein Road, you already have an industrial park and you could do the same thing up there in close proximity to three other existing subdivisions of homes. All I am saying at this time, this is our only, our single and sole opportunity to obtain a commitment that these things won't happen. What I am hearing is that you can do anything you want to and the only reason you are in here asking for the zoning is because staff thought it was a good thing to do before the zoning code was straightened out.

Mr. Olsen: I am not a zoning attorney and I can't speak to the specifics of the zoning code. But I can tell you that the area north of 57 and south of Heinlein Road was acquired as a runway protection zone for the extension of runway 1836, the north/south runway, that we have already constructed.

Mr. Jeffers: So that is done?

Mr. Olsen: That is done and the whole point of that property is to have an open space with no structures. The same thing is pretty much true for the area northeast of Oak Hill Road. INAUDIBLE....

Mr. Jeffers: So why not put that in the use and development commitment so we know that is true?

Mr. Olsen: I would have no objection to putting our Airport master plan INAUDIBLE...

Mr. Shetler: My concern is the opposite of what you stated, and that is I don't really want to give a future board the freedom to be able to do all those obnoxious types of things that can happen. The is like what was brought up before that we have put buffer zones into different areas to make sure those residences are not affected. I don't care if it is today or

five or 10 years from now, I wouldn't want a future board to make a decision that would put one of those obnoxious things next to the neighbors. I just don't think that would be right. I think we need to put those kinds of restrictions in here today in order to make it so a future board cannot do that.

Mr. Olsen: We couldn't do that independently. If the Airport Board takes any kind of action like that, it has to go through an environmental assessment. It has to happen in a public decision-making process. The other thing is that our Board members are appointed by local elected officials. So ultimately, if the Board members start down a path that the community doesn't like, the elected officials can refuse to reappoint them. So it is not like the Airport Authority is out here and it is monster that has been created. It stills answers to the public.

Mr. Shetler: There was one other thing you had mentioned about the one issue or problem of residences that are close to the Airport that become a problem somewhat for the Airport as far as expansion and stuff because of the noise and certain complaints that the Airport gets from the airplanes from the residences, is that....

Mr. Olsen: I think what happened is people move out to the vicinity of the Airport to build a house and they don't realize that there is not INAUDIBLE... even though the Tall Structures Act requires INAUDIBLE... But I think that is what happens.

Mr. Shetler: That is what my concern would be. Don't you think they would have the same objection to some kind of commercial property being placed there that was obnoxious for some reason, that later they discover that. It seems to me that you are trying to clean it up so that you don't have the residences out there complaining about noise and any other problems. I live on the other side of the airport right in the flight path. So I understand. I have no problems with it at all. We are used to it. But I think if we are trying to get rid of the residences from griping and complaining about the Airport, I don't know that we would want, we want to insure that we don't develop another group of people who are angry because we have set up commercial properties that are obnoxious. It looks like you are trading problems from one side to the other on the neighbors. So I would think that you would be in favor of trying to restrict it down to the point that people could live with the commercial environment that is there. I don't want to restrict you guys so you can't lease out the properties. I think it is a good thing that you have not gone on the tax rolls, and I don't want to see it going on the tax rolls for operating costs. But by the same token, I don't think the neighbors should be saddled with that expense either.

Ms. Stevens: I have a question about changing the ordinance. Last month, you came before us. Mr. Working was here. It was really from us to you. We want to change the zoning. So now here you are defending yourself when it is our objective to get that all zoned uniformly. So at this point, you went away and came back and no use and development commitment. We really didn't make any progress with the exception of the lights from last month to this month. In order to meet both objectives, and that being a uniform zoning, and bringing you guys into compliance so you don't have all these mixed uses out there, clean everything up. Is there a way at that point, when you talk about

changing the ordinance, if you can change the ordinance to add a hotel, can you change it to take out explosive storage? Is that the time to do it? I don't want to discuss this for another hour. We either need to call for a vote or we need give you the opportunity to do a use and development commitment. But I am not getting the feeling that you are going to do a use and development commitment. You continue to say ...

Mr. Olsen: I guess I am the wrong person to ask that. That would be a Board issue.

Ms. Stevens: Right and nobody is here to answer that question. Again, if we send it off and do what Mr. Shively said and continue it, is there any hope that in the next month anything would change? I'm not sure it would. So can you address that?

Mr. Mills: I would be happy to answer that question. We, as the Area Plan Commission and City Council and County Commission, have the authority to change our zoning ordinances to what we want them to be. So if we have existing C-4 zoned property in our community and we want to change the ordinance to say setbacks for C-4 zoned property now is 40 feet from any residential property, we can do that. If there is a building that is within 20 feet today, it would be legally allowed to remain. But any future development would have to be 40 feet. We could do the same thing with zoning. We could say that any development or structures built on Airport ground has to be a minimum of 20 feet away from residential. We could put in the ordinance that lighting has to be shielded from residential. We could put in that no explosive storage is allowed within so many feet of a residential property in our zoning ordinance. So once it is zoned AIR, we can modify our ordinance to be these things you are saying. We need a use and development commitment. So my opinion is that if we go forward with it, if it is rezoned to AIR, this is not our final chance to do anything. We, as a community, can change what it is that we require of our zoning classifications.

Mr. Korb Now wait, we as a community, or you as a staff?

Mr. Mills: You as the County Commissioner can do it in the County and the City Council can do it in the City.

Mr. Korb: But my experience has been in my brief six months in office that government moves at the speed of slow sludge. No disrespect, but I would rather tackle this here and now and I would like to address quickly your concern, Stacy, about working with the Air Board future. I have just been through it with them for three months on Hamilton's Golf Course. I will tell you that I have found it to be extraordinarily easy to communicate with and work with and enormously reasonable. I am not the least bit concerned. I would feel a lot better, Gene, if we could sit down and just go through a list. We don't want to handcuff you as you said, to keep from manufacturing. That is not common sense. But a lot of the things that Bill talked about, those would be common sense. To me, that is just a real simple solution to this because there is going to be development in the land that you own, and you have every right to do that within reason. Let's just sit down and use a little bit of common sense here and see what we can come up with and go from there. We don't have to make this decision today because it has been this way for years. What is

one more month? I hadn't even thought about what Mr. Shively said. I do have a concern about the City Council voting on this. I specifically remember a situation two months ago when this body said no to a simple Subway shop on Lincoln Avenue. I will be dog gone if the City Council didn't say unanimously yes. So I am sitting here saying they didn't pay any attention to what this body recommended. That is a concern that I have. Les is right. They don't have any voters out there. They don't care. No offense to the City Council. That is just a fact of life. So I would request that we just postpone this without any cost to the Air Board and just sit down and say what can we cross off this list? What is reasonable for us and then come back and wrestle this next month.

Ms. Stevens: Are you willing to do that? Basically you will ask us for a continuance if that is what you want to do.

Mr. Olsen: That would be ok. We would ask for a continuance.

Ms. Stevens: Is that the will of the Board?

Mr. Mills: One statement before you make that motion. Any use and development commitment that we would consider at next month's meeting would have to be filed by Monday. So I don't see that this would happen in that short time. So it might take two months for this to take place.

Mr. Korb: Big deal.

UNIDENTIFIED MEMBER: Could we give a motion that would say 90 days?

Ms. Stevens: I don't think we need to put a time on it.

Mr. Korb: I would rather just get it done right so we don't have to come back and talk about this five or 10 years from now.

Ms. Stevens: Right. And my question was really about Mr. Jeffers' point that this is our last chance. That's how I felt last month. Okay, there is a motion and second for a continuance. (Voice vote.)

Upon unanimous voice vote, Docket No: R-2008-2 is continued to the April meeting.

Mr. Korb: Gene, who can we get to go meet with them to talk about the list? I am happy to come do it. I am very reasonable with that.

Ms. Stevens: The question is, who would talk about the list?

Mr. Korb: I would like to volunteer Mr. Jeffers because Bill, sometimes he can wear you down with comments and things, but dog gone it, he is right a lot of the time. I am a Republican. I can't say all the time, but he is right a lot of the time. I really do respect his

opinion on things because he thinks things through, logically and plainly, and that's what I like about it.

Mr. Olsen: INAUDIBLE

Mr. Korb: Okay, great. Thanks, that's reasonable.

Ms. Stevens: Thanks, Mr. Olsen.

Docket No: 2008-7-PC R-2008-3 Petitioner: Zeiad Doleh

Address: (Complete legal on file.) 1926 Covert Avenue

Nature of Case: Petitioner requests to rezone from a C-1 zone to a C-4 zone.

Mr. Mills: Zeiad Doleh is requesting to rezone his property located at 1926 Covert Avenue from C-1 to C-4. This is the 0.288 acre lot located at the northwest corner of Covert and Weinbach Avenues. The commercial structure on this site was constructed as a tavern in the late 40's. In recent years, two different produce markets have occupied the site as temporary uses, with temporary SU-27 approvals to allow outside display and sales of produce. A change of use of the site to a car sales lot will require Site Review Committee review and approval, and the site must comply with all commercial code requirements for a new commercial occupancy permit. The corner of Covert and Weinbach is a controlled intersection. There are four curb cuts on this site: two on Covert Avenue and 2 on Weinbach. When the site was utilized for temporary open-air market sales, the existing curb cuts were allowed to remain with the condition that any more permanent or extended use of the site may require changes to the curb cuts different from those approved for the temporary use. Evansville Metropolitan Planning Organization recommends that only one access be permitted on Weinbach Avenue, to be located as far north as possible. Access on Covert should be constructed for right-out, egress only, and located as far west as possible. Access will be determined by Site Review upon submission of site plans for the establishment of the new use on the site. The intersection of Weinbach and Covert Avenues is noted as a commercial node on the Future Land Use Map of the Comprehensive Plan. This step up in zoning to C-4 is consistent with the Comprehensive Plan and the C-4 classification is consistent with all adjacent properties.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Bohleber: My name is Steve Bohleber. I represent the owner of this property, Zeiad Doleh. His proposal is to rezone this site to C-4 to allow an auto sales lot at this location. The automobile business has been very good to Z since he began in this community in 1992. In fact, if this rezoning is approved and he is allowed to develop this retail business, this will be his fourth automobile related business on Evansville's southeast side. He already operates a retail sales lot at 2151 Covert, just east of this site. He has an ancillary sales lot and repair facility at 2467 Covert, and a cleanup and detailing shop at 1604 E. Riverside. Last year, he sold approximately 1,200 vehicles, both wholesale and retail. He

deals not only with the public, but every dealer around here and even ships internationally. Currently, his business employs six people. He has been successful and needs more space. He needs another location. This new location will create at least two more jobs. This proposed site has a checkered history. I grew up in a neighborhood a few blocks from here. I can attest that for many years it was a neighborhood tavern. After that business closed, the site has been vacant often. It has fallen into disrepair. And if you look at what was there a few months ago, it was blight or an otherwise vibrant commercial intersection with all sorts of new businesses that popped up in the last few decades. Retail drug stores, all sorts of things have happened. My client bought this property even before attempting to rezone it and began cleaning it up and reconditioning it. Improvements have been quite dramatic, as consistent with any of his other properties around town. Z intends to operate this business in full compliance with building and zoning codes and fully agrees with the staff field report and EMPO analysis concerning access and use of this site. When this gets to Site Review, his engineers and builders will implement all the recommendations by that body to make certain this business is not only functional for him, but safe for the community and in compliance with all laws. Yes, he will pave the lot. Furthermore, if you look at this site, you will see that it is surrounded on all sides by C-4 and C-2 zonings. As the report notes, this step up zoning is totally consistent with the history of this neighborhood and with the Comprehensive Plan. The property to the east is a used car lot. It is good land use. It will turn a long distressed parcel of property into productive use once again and we ask for a do pass recommendation.

Ms. Stevens: Thank you. Are there any questions? Are there any remonstrators? (None.)

Mr. DiRienzo: My name is Michael DiRienzo with Kahn, Dees Donovan and Kahn. We represent the neighboring property owner who operates the used car lot immediately adjacent. We have two main objections. The first is procedural. I believe I sent a letter to the Area Plan Commission indicating that Z's failure to properly notify the public by posting a sign visibly noticeable to the public within 12 days prior to this hearing. My client does operate the used car lot next door. He goes there every day and did not see the sign until March 6th. Prior to that time, there was a large panel van, which is indicated in the first of the pictures. It was parked in front of the property. Because of this, we would ask that this rezoning be delayed to the next hearing so they could provide proper notice to the public. My client didn't receive the written notice in the mail because of a problem with the post office. It didn't get to him until Monday of this week. So he only knew about it ahead of time because he had heard it was being rezoned. The second objection has to do with Z's relationship with his neighbors, specifically with my client. Mr. Hamza Al Babed has worked for Mr. Doleh for six years before he left his business to open up his used car lot adjacent. Z currently owns two other locations, one of which is currently empty. There are no cars on that lot. So we are not clear why he needs this location immediately adjacent to his employee. Since Mr. Doleh has purchased this property, I have included some pictures of what he has done along the property line with his neighbor, including blocking the back alley with debris and fence posts, including encroaching over the property line. In one of the pictures, you will notice and SUV parked

right next to my client's sign for his business. This is done to create confusion. My client has received several calls inquiring about the price of this car, even though it is not on his lot. This has created a problem. The location of these two properties immediately adjacent to each other and the location of a sign is going to create a problem of confusion with the public. Also, Mr. Bohleber has stated that his client will comply with all building codes as he operates his business. On February 1st, the Building Commission issued a stop notice for Doleh because he was remodeling the building without a permit. I think the past use of this property does create a problem for the future. Frankly, my client doesn't trust his neighbor to continue to operate this business in compliance with the laws or as a good neighbor. So that is why we are here asking you to consider not rezoning this as a C-4, leaving it as its current use.

Ms. Stevens: Are there any questions?

Mr. Pedtke: Which is your client's property?

Mr. DiRienzo: It is the one with the cars on it, immediately next door.

Mr. Pedtke: And the sign in the photo is your client's sign?

Mr. DiRienzo: Yes. It doesn't show very clear on the picture up there. But the north six feet of this property is half of a 12 foot alleyway that is dedicated and shown on the map. There is a curb cut and access to that alleyway on Weinbach, at the far north of the property, which would be the curb cut that they are requesting be the only one that is there. That is access to my client's property that has been used for years by my client and by prior owners. It is also used by neighboring property owners as well. We ask that that remain unobstructed.

Ms. Stevens: Are there any other questions?

Mr. Colter: Two points to clarify. The alley, is it a dedicated alley or shared? I was looking at the map and it shows the property line going down through the center.

Ms. Stevens: It is not a dedicated alley.

Mr. DiRienzo: It is listed as a 12 foot alley, six of which is on this property.

Mr. Colter: So technically, the alley that is showing the rest of it dead ends at the property as a dedicated alleyway?

Ms. Stevens: It is unplatted land.

Mr. Colter: Then the fence shown in the picture lies where within the property in question? On the west property line?

Mr. Mills: I believe that is correct.

Mr. DiRienzo: There is a fence that doesn't go all the way to the property line.

Mr. Colter: In front, but it goes all the way to the back.

Mr. DiRienzo: It doesn't go all the way to the back. It is open where the alleyway is.

Mr. Korb: And that belongs to your client, the fence? Or does it belong to the property being rezoned?

Mr. DiRienzo: The fence belongs to my client.

Mr. Korb: Is there some legal term, maybe I have read too many books. You use that alleyway for years and years. What is that term?

Mr. DiRienzo: There is a term called descriptive easement. The way that I have seen and looking at the survey, it does indicate that it is a 12 foot alley, six of which is on this property and there is a curb cut there. I believe this would be considered a dedicated alley. It has never been accepted by the City.

Mr. Korb: So I need to stop reading books, right? Okay.

Ms. Stevens: Are there other remonstrators on this petition?

Mr. Bohleber: In the 32 years I have been doing this, I have never heard an issue of sign posting be raised before, despite the fact that half of them get blown away, down by angry remonstrators and a variety of other things. But I specifically advised my client when he hired me about the notice requirement. He picked up the sign from my office on February 15th. He tells me he posted it on either February 26th or 27th where it remains until this day. That is more than 12 days before this meeting. I asked him to sign an affidavit and swear under oath that this was properly posted. We can't help it that this man didn't see it. Partly, the purpose of notice is make sure people can participate in the process. This gentleman has known since at least when I spoke to him on January 7th what my client's plans were at this site. He did receive the notice as required by law. It is not our fault the post office didn't deliver it on a timely basis. It was post-marked and filed by me personally on a timely basis. It has also been advertised in the paper. So the purpose of notice is to make sure that the public and the adjacent property owners are aware of what is going on so they can come to this meeting. That has certainly been met. I don't think there is any practical basis to say this was not properly notified, unless you just believe Mr. Hamza Al Abed and disbelieve my client and the affidavit he submitted. I find it very curious that someone who is operating a used car lot thinks that a used car lot next to his is inappropriate land use. That is the question here today. My client tells me that Hamza Al Abed was an employee of his for 11 years. A trusted, honest employee, a friend, someone who's children still associate and play together. Two and a half years ago, there was a mutual parting of the ways. Hamza Al Abed became a competitor and that is wonderful. That is what America is all about. But I think his objections are very suspect.

Obviously, I guess he wouldn't want to have a successful auto sales lot next to his lot. But that is just the way it goes. My client has every right to use this as good land use. My client also adamantly denies he has done anything to interfere with Hamza's business. In fact, it has been Hamza who, for a long time, has been using my client's business to park his merchandise on and to travel across. So if anyone can say there has been a trespass occurring, it is the other way around. But my client hasn't objected to that. He has not been using it up to this point. He has no intention of doing anything to interfere with his neighbor's use or access to his property. He just vehemently denies that. If he would do that in the future, there is plenty of remedies available. So his objections here today, the procedural one, I think is weak to non-existent. The other has nothing to do with land use. It has to do with he doesn't want this guy next to him selling the same thing he is selling. So I ask that you pass this and recommend its passage to the City Council.

Ms. Stevens: Thank you.

Mr. Shetler: Mr. Bohleber, did I just hear you say that your client would not restrict access to the alleyway? In other words, it just stays open and used as is?

Mr. Bohleber: Right.

Mr. Jeffers: Looking at the photo on the screen, there are two red cars and a maroon car parked at the southeast corner of the property, do you know who owns those?

Mr. Bohleber: I have no idea when that picture was taken nor whose vehicles those are. We don't know.

Mr. Mills: The photo was taken in 2005. So it has been quite a long time ago.

Mr. Jeffers: I just wondered if the reason the SUV was parked there now was
INAUDIBLE...

Mr. Bohleber: I don't know. Those are not my client's.

Ms. Stevens: Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Colter, Mr. Jain, Mr. Jeffers, Mr. Korb, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Ms. Stevens

Nays: None

There being 9 affirmative votes, Docket No: R-2008-3 goes forward with a recommendation for approval.

COUNTY REZONING

Docket No: 2008-8-PC VC-1-2008 **Petitioner:** Sterling Properties, LLC

Address: (Complete legal on file.) 7900 E. Morgan Avenue

Nature of Case: Petitioner requests to rezone from an agricultural zone to an M-2 zone with a use and development commitment.

Mr. Mills: Sterling Properties is requesting to rezone the property located at 7900 E Morgan Avenue from Agricultural to M-2 with a use and development commitment. This is a 13 acre site located on the north side of Morgan Avenue, between I-164 and Warrick County line. Sterling proposes to rezone this site to combine the site with the adjacent 17 acre site rezoned by them to M-2 in 2007, and have indicated that plans are for development of new facilities for Sterling Boiler and Mechanical and affiliates. The petition includes a use and development commitment that identifies specific uses to be prohibited on the site and addresses infrastructure concerns including lighting, trash areas, landscaping, paving, building materials, and traffic issues. All commitments stated will expire in 30 years after passage of the rezoning. This site is located east of I-164, and is adjacent north of the Morgan Avenue frontage road. The frontage road along Morgan Avenue was installed by the State as part of the S.R. 62 widening project. Telephone Road adjacent along the north property line of this site is a rural residential street. Currently this site has a two access drives onto the Morgan Avenue frontage road. Auxiliary lanes were provided by the State at the Morgan Avenue intersection with the frontage road. Commercial access should be limited to this existing frontage road only. The use and development commitment allows for gated, emergency access to Telephone Road for ambulance, medical, fire, and similar emergencies or in the event the highway or frontage road access is blocked. This site is designated on the Future Land Use Map of the Comprehensive Plan as an area of parks and residential development. Adjacent east is M-2 and an area designated as commercial. North along both sides of Telephone Road and to the north of Telephone Road is designated as residential. South across Morgan Avenue is industrial development. North across Telephone Road is Centerra Ridge Subdivision, a new 211-lot residential subdivision approved in April, 2006. This is a request to rezone the 13 acre site to M-2, extending the industrial classification eastward, combining this site with the existing M-2 site, creating an overall 30 acre site for industrial development.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Ms. Worthington: My name is Maria Worthington. I am representing Sterling Properties, LLC and Sterling Boiler and Mechanical. With me is Dan Felker, the president of Sterling Boiler and Mechanical. We have been here before. Last summer you may recall that we rezoned the property at 7800 Morgan Avenue to M-2. You will see M-2 on the drawing. It was quite an extensive project. We want to reintroduce to the new members this very exciting development. I want to take a few minutes to walk you through the project and the work we have done with our neighbors to make this project the best that it can be for

everyone. We feel that we have done a lot of work with the neighbors and we are hopeful that the members will be in favor of us adding this extra property onto the rezoning. Sterling has an option to purchase this acreage immediately to the east of the existing M-2. And, if you allow this rezoning to pass, they will proceed with the purchase and utilize this extra acreage for the expansion of its new facilities. By way of background, Dan Felker began Sterling Boiler and Mechanical with some pretty modest operations on Seventh Avenue in Evansville 25 years ago. In the handout, the front page is a real short history of Sterling Boiler. You might be surprised to know that today Sterling Boiler and Mechanical is one of the top 100 construction companies in the US, mainly serving the growing power and energy industry. Sterling generates an annual payroll of over \$62,000,000 per year and employs on average 750 employees in job sites through Indiana, Pennsylvania, Ohio and some other states as well. Those employees include highly skilled craftsmen, management personnel, lots of office personnel. I don't have certain people here with me today only because they were here so much last summer and I am not sure there are any new issues that they would be needed for. Members of this project team included myself, Mike Schopmeyer, an attorney in my office, Larry Downs, another attorney in my office, Mike Shoulders, the architect. I have brought with me conceptual drawings of what these facilities will look like. And Jim Farny, one of the finest engineers in the community at Bernardin Lochmueller Associates, who did a lot of engineering work and planning of new sewer systems for the site. They are not here with me today but I am hopeful that the last time we were here that most of your questions of them have been answered. If not, we will do everything we need to do to get you additional answers. Last summer, we filed the rezoning petition on 7800 Morgan Avenue. Between last spring and summer and also a few weeks ago, we have met with neighbors. I believe we have addressed all of their concerns. The only thing that is outstanding isn't something that is appropriate for this hearing. Therefore, the owner is not here. A neighbor down the way at Sticks and Stones has always said they wanted to be addressed as to what the drainage plans will be. But they told me they wouldn't be here remonstrating. This project, if completed, will be a handsome addition to Vanderburgh County. In your packet, there is a colored drawing of Sterling's new facilities. For those of you who are new to this project, we started out with a drawing done by hand by Mr. Felker and that drawing showed five different buildings on the site. The neighbors were really bothered by the idea of having five different buildings. They thought the site would look too busy. So we ended up with this configuration you see now. Instead of multiple buildings spread out over the property, we have a much different campus. Now we have one main facility that keeps the operations under one roof. After we came up with this model, then the inner building configuration was changed and flip-flopped to make the office portion to the point farthest north. That way it would be the office functions and not any kind of production functions closest to the nearby neighbors. That means the heavier operations would be done toward the south of the property near the frontage road and highway. Another thing then neighbors wanted us to do in the previous rezoning, and we have done it again on this rezoning, they wanted to have a little bit of an agricultural buffer. There are homes around there. They wanted us to remove the northern tip of the property from this request and leave it agricultural and we have done that. We did it last time and we did again on this property. So just to the north, everything would still be owned by our client, but is left agricultural and the neighbors are pleased about that. The

other things we did, the neighbors expressed that they don't have sewer services. They requested that they would like sewer available to them. So we studied each neighbor who expressed an interest. So Sterling agreed on a point to which it will bring its sewer line and then pay for the engineering work to be done for each neighbor so they could get a cost estimate of what it would cost to get from their property to this spot. So they are pleased with that. While it is not in the use and development commitment, the neighbors didn't feel like it needed to be, it is just sort of an informal arrangement we have. We have an additional neighbor this time. The use and development commitment has quite a few benefits. It has a landscaping buffer in it. It limits the building materials and colors we will use. It is pretty extensive. It is a 30 year commitment. We think we did a lot of things to please our neighbors. I am available to answer any questions and Dan Felker is here to answer any questions. We believe we addressed all the neighbors' concerns last time and this time. I think everybody is happy. We also did a preliminary site review last time.

Ms. Stevens: Thank you. Are there any questions?

Mr. Korb: The plans for landscaping on SR 62 side, is that going to be entrance and exit there?

Ms. Worthington: Facing SR 62, there is no buffer. There is a frontage road that will be there. That will be the main point of entry. That will be the offices.

Mr. Korb: My only concern is not a huge concern because I think it is a great project. It works well aesthetically.

Ms. Worthington: We hope it will look like our conceptual drawing. For an industrial type facility and with the pine tree buffers on the side, I think it will look ...

Mr. Korb: I noticed that.

Ms. Worthington: In the commitment, we committed to the staggered pine trees. I want to say, as a compliment to my client, one thing that really impressed me in going through this project, Dan came to the site and walked everybody's properties with them. We changed the use and development commitment. One neighbor didn't want to lose her trees. So we are going to incorporate her trees into the buffer. She will never lose her trees.

Mr. Jain: What kind of time frame do you have to start and finish?

Ms. Worthington: Whenever we got approval last year, our time frame was a year and half. I am assuming it is still about a year and a half out.

Mr. Felker: INAUDIBLE

Mr. Jain: Next question, I believe you are also partners with the Tee Time. Are you going to relocate that somewhere?

Mr. Felker: INAUDIBLE...I think we are going to have to shut it down as time goes by. It is not a good market.

Ms. Stevens: Are there any remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Jain, Mr. Jeffers, Mr. Korb, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Ms. Stevens

Nays: None

There being 9 affirmative votes, Docket No: VC-1-2008 goes forward with a recommendation for approval.

SUBDIVISIONS

Ms. Stevens: The rezoning portion of the meeting is now over and we will now hear the proposed subdivisions that are on our agenda. As stated earlier, the Area Plan Commission is the sole authority on subdivisions. State law and our Subdivision Control Ordinance dictate the issues the Plan Commission can consider when reviewing a subdivision application. Unlike a rezoning, consideration of a subdivision is limited to whether it complies with the standards and requirements in the local Subdivision Control Ordinance. If a subdivision application meets the requirements set forth in the Subdivision Control Ordinance, the Area Plan Commission must approve the primary plat. Indiana Courts have indicated that Plan Commissions have no discretion in this regard, and that our role in reviewing and acting on subdivisions is purely ministerial.

Seven affirmative votes are needed to approve a subdivision plat and conversely, seven negative votes are required to deny a plat. In the event that there are not seven votes for or against, this is considered a no action vote and the plat returns to the next APC meeting for consideration.

The guidelines for testimony on subdivisions will be the same as those explained at the onset of this meeting. Petitioners and remonstrators should remember that the only testimony the APC can consider are facts that prove whether the plat complies with the specific standards in the Subdivision Control Ordinance. Copies of the Subdivision Control Ordinance are available in the Area Plan Commission office in Room 312 or on our website at evansvilleapc.com.

Now let's move on to the subdivision.

5-S-2008 Emerica Brandee Crossing

Part of Section 30, SW T6S/R9W Knight Township Map CI-157

Location: Located at 918 Martin Lane at the intersection with Blackford Avenue.

Mr. Mills: The Emerica Brandee Crossing plat is a four-lot residential subdivision on a 1.37-acre site located at the southeast corner of Martin Lane and Blackford Avenue. The applicant proposes to create four lots on this parcel, which contains two legal nonconforming homes (on Lots 1 and 2). The zoning is R-1. The Subdivision Review Committee reviewed this plat on February 12, 2008. On February 14, 2008, the applicant submitted a revised plat to address the concerns of the Site Review Committee. The proposed Lots 1 and 2 will have frontage on Martin Lane and Lots 3 and 4 will front on Blackford Avenue. The plat restricts future access to Martin Lane to 2 driveways only, and indicates that any future drives must be located as far from the Blackford/Martin Lane intersection as possible.

City water is available at the site. Lots 1 and 2 have sewer service, and sewer is available by extension to Lots 3 and 4. Comments from the Water and Sewer Department are as follows: Lots will likely require front footage and tap fees for water. Provide plans for sewer extension – per procedures.

On February 28, 2008, the Board of Public Works granted final drainage plan approval for the Emerica Brandee Crossing plat. The site is not located within the 100-year floodplain. Staff recommends that the Emerica Brandee Crossing plat be granted primary approval, as the plat complies with the Comprehensive Plan and the Subdivision Code.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Young: My name is Rodney Young. This is the owner of the property, Kim Weimer.

Ms. Stevens: Do you have anything to add?

Mr. Young: No.

Ms. Stevens: Great. Are there any questions? Are there any remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Jeffers, Mr. Korb, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Mr. Colter, Mr. Jain, Ms. Stevens

Nays: None

There being 9 affirmative votes, Docket No: 5-S-2008 is approved.

ORDINANCE CHANGES

Amendments to the zoning code of the City of Evansville and Vanderburgh County regarding wording of use and development commitments.

Mr. Oliver: Good evening. We have two ordinances you should have received copies of in your packets. The first one concerns use and development commitments that are included with rezonings. This ordinance was suggested and written by Ted Ziemer, the County attorney with the help of our attorney, Joe Harrison, Jr. Basically, it involves a minor procedural change to address a legal issue. When a use and development commitment is proposed, basically it sets up a process that will happen like this. When a rezoning is approved by the County Commissioners or City Council with a use and development, the City Clerk or County Auditor will record the ordinance and the signed use and development commitment as one document in the Recorder's office. The ordinance will be worded with blanks in it for the recording information that is assigned by the Recorder. That is basically the process. It is pretty straight forward.

Ms. Stevens: Okay. Are there any questions?

Mr. Harrison: Is there a motion to pass it on to the County Commissioners. We will need to separate votes.

Ms. Stevens: We have a motion and second for the County to pass this as presented. (Voice vote.) Upon unanimous voice vote, the County ordinance change is approved.

Ms. Stevens: Now for the City ordinance. We have a motion and second. (Voice vote.) Upon unanimous voice vote, the City ordinance change is approved.

Amendment to the zoning code of the City of Evansville amending procedures regarding certain adult businesses.

Mr. Oliver: The second proposed ordinance concerns adult uses. This one is for the City. INAUDIBLE... the purpose of this ordinance is to make our zoning ordinance consistent with recent case law. It is recommended by Joe that we pass such an ordinance so that our ordinance doesn't get challenged. INAUDIBLE.... Let me give you a little background. In 1996, the City and County changed the zoning code to make adult uses a special use which requires approval by the Board of Zoning Appeals. They also at that same time, added additional requirements on adult uses. A lot of those concern spacing from residential property, churches, schools, parks, and other existing adult uses. This proposed change to our code will eliminate the special use and make the adult businesses a permitted use in C-4, M-1, M-2, and M-3 zoning districts, but it will not affect the spacing requirements I referred to that are already in the ordinance for the special use. It would not also affect the districts that the adult uses are allowed in. INAUDIBLE... So if someone were to propose a new use, they would be required to have the correct zoning. They would be required to meet the spacing requirements. If they didn't have the

correct zoning, they would have to ask for a rezoning. If they couldn't meet the spacing requirements, they would have to request a variance with the Board of Zoning Appeals. INAUDIBLE... That is basically what is being proposed. I can try to answer any questions.

Mr. Harrison: The requirement now for an adult use is that a survey has to be submitted with the petition that the location is sufficient feet away from parks, schools, residences, churches, etc. That is there now. That doesn't change. The other feature is that if someone seeks a permit and they don't meet the requirements for whatever reasons, they don't get the permit. The permit is denied. The thing that is being changed here, the main thing, is that this special use permit will not now go to the Board of Zoning Appeals like it has been in the past requiring that the Board vote on whether or not the requirements have been met. The Area Plan Commission will make that decision if it fits into the ordinance. Nothing is changing in the requirements of the ordinance. It is just that one feature is being removed and another one is being added.

Ms. Stevens: Are there any questions? We are just voting on City.

Mr. Jeffers: Are you saying the Area Plan Commission makes the decision?

Mr. Harrison: Someone comes in and says they want to put in an adult establishment here. They check the zoning, the survey they bring in. If it doesn't fit within those parameters, they tell them they can't get a permit.

Ms. Stevens: Is there a motion for approval? (Voice vote.) Upon unanimous voice vote, the City ordinance is approved.

Meeting adjourned.

Stacy Stevens, President

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the Area Plan Commission office or can be heard or viewed on our website at www.evansvilleapc.com.

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber