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1 STATE OF INDIANA)
)SS:

2 COUNTY OF ALLEN)

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7 BOARD OF COMMISSIONERS
 OF THE COUNTY OF ALLEN

8

9 RE: LEGISLATIVE SESSION OF
10 MAY 25, 2005

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14

DATE: May 25, 2005

15

16

TIME: 10:05 a.m.

17

18

LOCATION: Room 200
 Commissioners Courtroom
 City-County Building
20 1 East Main Street
 Fort Wayne, Indiana 46802

21

22

REPORTER: M. Joshua Osbun

23

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0002

1 PRESENT:

2 Linda K. Bloom Allen County Commissioner

3 Marla J. Irving Allen County Commissioner

4 Nelson Peters Allen County Commissioner

5 Susan Elser Allen County Commissioners'

Office

6

7 John McGauley Public Information Office

8 Mary Hitchens Public Information Office

9 G. William Fishering Allen County Counsel

10 Alex Wernher Director, iMap

11 Kim Bowman Allen County Department of
12 Planning Services

13 Michelle Wood Allen County Department of
14 Planning Services

15 Scott Harrold Allen County Department of
16 Planning Services

17 Bill Hartman Allen County Highway
18 Department

19 Ben Ridenour Allen County Highway
20 Department

21 Tony Burrus Director, Safety and
22 Environmental Department

23 Shaun Murray Allen County Legislative
24 Liaison

25 Larry Weber Allen County Surveyor's
Office

0003

1 Dr. John Crawford Brain Gain

2 Maureen Grinsfelder Fort Wayne Educational
3 Foundation

4 John J. Wernet Carson Boxberger

5 Jim Federoff Federoff Law Firm

6 Dennis Logan Rothberg, Logan, & Warsco

7 Joe Bishop Bishop Engineering and
8 Development

9 James R. Hall Occidental Development

0 F.W. Riebenack

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|------|---|--------|
| 8 | | |
| | John J. Wernet | 16 |
| 9 | | |
| 10 | | |
| | Jim Federoff | 24 |
| 11 | | |
| 12 | | |
| | F. W. Riebenack | 36, 71 |
| 13 | | |
| 14 | | |
| | Dennis Logan | 43 |
| 15 | | |
| 16 | | |
| | Sherry Giffin | 59 |
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| | Dr. John Crawford and Maureen Grinsfelder | 75 |
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| | David Crawford | 89 |
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| | Bill Hartman | 118 |
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| | Shaun Murray | 123 |

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Agenda:

- 2
- 3 1. Approval of Minutes of 05/18/05
Legislative Session 10
- 4
- 5 2. Dr. Crawford - presentation of the check
for the Brain Gain Fund 75
- 6
- 7 3. Consideration of bids for C & M Fine
Pack Rail Spur Extension, Bid Reference
8 #10-05 10
- 9
- 10 4. Amendment of ADA Grievance Procedure
and Notice under the Americans with
Disabilities Act 13
- 11
- 12 5. Vacation Petition #371/05: Vacate a
portion of the storm sewer and surface
13 drainage easement in the north half of
Lot 21 in Sycamore Hills subdivision
14 at 10920 Birkdale Court approximately
100 feet north of Birkdale Court 14
- 15
- 16 6. Vacation Petition #372/05: Vacate a
portion of unimproved public right of
17 way along the south side of Lot 3 and

along the west side of Lots 3, 4, and
5 in George Collins Addition 81

18
19

7. License Agreements between Allen County
(on behalf of iMap) and the following
entities: 117

20
21

A) Z.K. Tazian Associates:

- a) Orthophotos for Wayne Twp sections
17 and 18 \$170.00
- b) Contours and parcels in Washington
Twp section 8 \$178.00

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B) IUPUI, Center for Urban Policy and the
Environment: Parcels data for Allen
County. This project is for the
Surveyor's Office; there is no charge.

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C) Earth Construction: Aerials and contours
for Washington Twp section 13 \$235.00
D) Earth Source, Inc.: Contours in Eel River
section 24 \$150.00

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E) Design Collaborative: Orthos for Wayne
Twp section 2 \$85.00

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8

F) Kerry Dickmeyer: Orthophotos, contours,
and parcel data for Aboite township
sections 5 & 6 \$550.00

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10

G) Beam, Longest & Neff, LLC:

a) Parcels, contours, aerials for
projects with the Highway Dept.
No charge.

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12

b) Parcels, contours, and orthophotos
for project with the Highway Dept.
on Gump Rd. No charge.

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14

H) Gensic Engineering:

a) Contours for Washington Twp section
22. Replacement for previous
corrupted data delivery. No charge.

15
16

b) Contours for Washington Twp section
26. Replacement for previous

17 corrupted data delivery. No charge.

18 I) DLZ, Inc.: Orthophotos, parcels, and
19 contour data for Bridge 319 project with
20 the Highway Dept. No Charge.

21 J) the Sidwell Company: Orthophotos and
22 parcels for Eel River sections 25 and 36
and Perry Twp sections 30 and 31.

8. Approve and accept contract completion
23 for the Stelhorn Road Bridge over Koester
Ditch, Project #00-024, Bid ref #50-04.

24 Primco, Inc. was the contractor 118

25
0008

1 9. Approve and award quotation bid project
for 2005 Concrete Pavement Repair Package
2 #1 - Northern (Oak Pointe and Oak Grove
Additions), Project #05-188 to Newell
3 Construction Co., Inc. - Total award
\$47,581.00 120

4
5 10. Approve and award Bid Reference #09-05,
bridge replacement of the Moeller Road
6 Bridge over Trier Ditch (Bridge #182),
Project #00-030 to Primco, Inc. - Total
7 award \$460,210.68 (Engineer's estimate
\$510,476.05) 120

8
9 11. Approve 60/40 participation agreement
between Allen County and Oak Borough
10 Addition Association for street
improvements (County share 60%; Oak
11 Borough's share 40%). Estimated total
cost \$101,986.45 121

12
13 12. Approve 60/40 participation agreement
between Allen County and Phase 2 Sycamore
14 Hills Addition Association for street
improvements (County share 60%; Sycamore
15 Hills share 40%). Estimated total cost
\$148,218.80 121

16
17 13. Approve Warranty Deed required for right

of way acquisition on Leo/Mayhew Road

- 18 Intersection, Project #02-028 from: 122
19 a) Parcel 10 - Shambaugh Family Limited
Partnership

- 20
21 14. Ratification of Agreement with SES
concerning SDI 122

- 22
23 15. Other business --

24
25

- 0009
1 16. Approval to waive the 2nd Reading on any
matter approved today and for which it may
2 be deemed necessary for the Legislative
Session of May 25, 2005 124

- 3
4 17. Comments from the Public --

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- 0010
1 BLOOM: Good morning, and welcome to the Allen County
2 Commissioners Legislative Sessions, May 25th. First
3 we're going to celebrate our country and a prayer,

4 please.

5 (At this time the Pledge of Allegiance is
6 recited, followed by a moment of silence.)

7 BLOOM: Thank you. Approval of the minutes of May
8 18th.

9 NELSON: I make a motion to approve the minutes of
10 May 18th.

11 IRVING: I'll second that motion.

12 BLOOM: All in favor signify by saying "aye."

13 NELSON: Aye.

14 IRVING: Aye.

15 BLOOM: Aye. Is the doctor here yet?

16 IRVING: No.

17 NELSON: I don't see him.

18 BLOOM: Consider of bids for C & M Fine Pack Rail
19 Spur Extension.

20 IRVING: Good morning.

21 BLOOM: Good morning, Scott.

22 HARROLD: Good morning. For the record I'm Scott

23 Harrold with the County Department of Planning

24 Services. This--just last Tuesday we had a bid

25 opening for this project. We actually only received

0011

1 one bid, but we think it was a good price. The bid
2 amount was \$82,919.40. The engineer's estimate was
3 \$104,825.00.

4 BLOOM: How much?

5 HARROLD: A hundred and four thousand--

6 BLOOM: Okay.

7 HARROLD: --and some change. The winning bidder is

8 actually the general contractor for C & M Fine Pack

9 doing their building work out there, and they

10 actually got quotes from several different rails

11 companies for--to subcontract this work to, so it's

12 actually one bid that's based upon quotes from a

13 number of different sources. We also had some other

14 individuals interested in bidding, but just due to

15 the constraints with their obligations to other

16 projects or other projects they were bidding on they

17 didn't feel they had the time to bid on this project.

18 We investigated the thought of rebidding it, but I--

19 we think that it's a good price, and I think we

20 should go forward from here.

21 BLOOM: Will this be paid--
22 IRVING: Commissioner--
23 BLOOM: --out of the TIF--
24 IRVING: --oh, go ahead.
25 BLOOM: --TIF district? Is this--who--who pays this?
0012

1 HARROLD: Well--
2 BLOOM: Is this in the redevelopment?
3 HARROLD: --yeah, it's in the economic development
4 area for Lincoln Industrial Park. We have some TIF
5 funds there that we could use to pay for this. We
6 have more than enough. We owe the Highway Department
7 some money, too, but, you know, we'll get them paid
8 off one or the other.

9 IRVING: Yeah, we do, and if you remember correctly,
10 Commissioner Bloom and Commissioner Peters, this is
11 the second expansion on C & M Fine Pack. They've
12 made a \$25 million commitment in equipment, a \$10
13 million expansion in the building, and it is bringing
14 269 jobs to our area.

15 BLOOM: Good job.

16 IRVING: The race for--the--if you remember we were
17 kind of competing against the Atlanta area, Georgia
18 area with this, and with the rail spur there could be
19 a continued economic development even after--after
20 this one is completed. Their business continues to
21 expand. Yesterday on our way back I took
22 Commissioner Peters through, and we saw where the
23 rail spur was going to go through, and unless you
24 have any questions I would be honored to make the
25 motion that we accept the rail spur expansion for C &

0013

1 M Fine Pack.

2 PETERS: I'll second that motion.

3 BLOOM: All in favor signify by saying "aye."

4 NELSON: Aye.

5 IRVING: Aye.

6 BLOOM: Aye. Thank you, very much.

7 HARROLD: I have a contract for your signature this
8 morning.

9 BLOOM: All right.

10 HARROLD: I apologize for not getting it down here
11 sooner. Bill reviewed it.

12 BLOOM: Do you have it?
13 HARROLD: I laid it up there for your signature.
14 It's a standard format.
15 BLOOM: Okay. Great. Thank you, very much.
16 IRVING: Thank you, Scott. I appreciate the work--
17 PETERS: Thanks.
18 IRVING: --you've done on this.
19 BLOOM: Amendment of ADA Grievance Procedure and
20 Notice under the Americans with Disabilities Act.
21 PETERS: This is, I believe, a renewal of our current
22 obligations under the Americans with Disabilities
23 Act, and having said I would move passage of the ADA
24 Grievance Procedure.
25 IRVING: So moved--oh, seconded.

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1 BLOOM: All in favor signify by saying "aye."
2 NELSON: Aye.
3 IRVING: Aye.
4 BLOOM: Aye. Vacation Petition #371/05 to vacate a
5 portion of the storm sewer and surface drainage
6 easement in the north half of lot number 21. Good
7 morning.
8 WOOD: Good morning.
9 IRVING: Susan, the ADA grievance procedure that we
10 just passed, do we need one or two copies of that,
11 please? Oh, you've got--oh, you've got a second one
12 here. Okay, thank you. I had a blank one, too.
13 Good morning, Michelle.
14 WOOD: Good morning. Michelle Wood, Department of
15 Planning Services. This is petition--reconvened
16 hearing of petition 371/05, Mark R. Minnick, and the
17 request is to vacate a portion of the storm sewer and
18 surface drainage easement in the north half of lot 21
19 in the Sycamore Hills subdivision to allow for an
20 existing house and room additions, and this is at
21 10920 Birkdale Court in Sycamore Hills subdivision,
22 which is section nine of Aboite Township. You've
23 heard this two weeks prior, actually several weeks
24 prior. The first time we met the applicant did make
25 their presentation for the request for this easement

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1 vacation, and we also heard from the neighbors, the
2 Allen County Surveyor, and an engineer for the

3 applicant.

4 The--the issue here is there's an existing
5 house on the lot which is partially over a storm
6 sewer easement for Sycamore Hills, and that easement
7 originally--a portion of that easement was originally
8 approved by the commissioners in 1991, but apparently
9 never recorded, so the house is over that easement.

10 The applicant now wishes to build a second story deck
11 on pilings with no foundation, and that will also
12 encroach into this easement, so their petition is to
13 come here, clean up the previous vacation, and to add
14 this portion for the deck. That hearing was
15 deferred. The vote was tabled till the following
16 week. It was originally April 27th. Then on the 4th
17 it was heard again. That meeting, then the--there
18 was an approval, but then there was a motion to
19 rescind the approval and reconvene the hearing.

20 BLOOM: Right.

21 WOOD: That's where we are today.

22 IRVING: Michelle, I would like to add again for the
23 second time that even though I was in Washington,
24 D.C. on the April 27th hearing that I have reviewed
25 everything that was presented and I was present last

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1 week when it was extended.

2 BLOOM: A couple of weeks ago, yeah.

3 IRVING: Or two weeks ago, whenever. So I have
4 reviewed everything. Thank you.

5 BLOOM: Thank you. Good morning, and welcome to the
6 25th--May 25th public hearing for vacation petition
7 371. Michelle will act as our staff for this
8 morning's hearing. According to the law it can only
9 be--include those matters that have been advertised.

10 Has proper notice been published?

11 WOOD: Yes, in both Fort Wayne newspapers.

12 BLOOM: Thank you. The first thing we're going to do
13 this morning is--we've opened the public hearing, and
14 would anyone like to speak for the vacation? Anyone
15 for the vacation? Good morning.

16 WERNET: Good morning, Commissioners. My name is
17 John Wernet. I'm an attorney with Carson Boxberger.

18 PETERS: Good morning.

19 BLOOM: Hi, John.

20 WERNET: I've been retained by Mr. and Mrs. Minnick
21 to represent them at the continued hearing. I know
22 that the commissioners have already heard most of the
23 information. I'm not going to try to review anything
24 that's already been heard. I would point out that
25 the commissioners in 1988 granted easement vacation
0017

1 to the lot immediately to the west of lot 21, to lot
2 20 which is now Mr. Riebenack's. Drainage easement
3 vacation was granted for that lot, and there was also
4 a drainage easement vacation granted for the lot to
5 the west of that, lot 19, so both of those lots were
6 granted easement vacations--drainage easement
7 vacations to allow for the construction on those two
8 lots, so there is a history in Sycamore Hills of
9 granting the vacation easement request.

10 The subject lot, lot 21, was also granted a
11 easement vacation in 1991 which was never recorded,
12 and so it did not appear in any of the recorded
13 information. That easement was about--about 2,003
14 square feet, .046 acres. The current easement that
15 is being requested to be vacated overlaps that to
16 some extent. The current request is about 1669
17 square feet, and actually the deck--the existing
18 office encroaches into the easement area of--over the
19 previously granted vacation, and the new addition
20 would encroach by approximately 100 square feet in--
21 so we need the new vacation. We cannot go along with
22 the 1991 vacation for the construction that is
23 anticipated.

24 IRVING: Sir, just--I need to understand for our map,
25 make sure that we're on the same page. We have an
0018

1 approval of July 11th of 1988 which is lot 19.

2 WERNET: Yes.

3 IRVING: Is lot 19 10928? Michelle? Does any--so to
4 make sure that--

5 BLOOM: We have that all in our folder.

6 IRVING: But, no--

7 BLOOM: I couldn't find--

8 IRVING: --I just--

9 BLOOM: --I did.

10 IRVING: --looked here, and--

11 WERNET: 10--10936 is lot 19. Lot 20 is 10928.

12 IRVING: Oh, lot 20. I had lot 20 at 10920. I'm
13 sorry.

14 WERNET: 10920 is our lot, and that's lot 21.

15 IRVING: And this is lot--okay, I just want--

16 BLOOM: This is 20.

17 IRVING: --to mark this so I--so lot--10928 which is
18 lot 20--

19 BLOOM: Yeah.

20 IRVING: --had an easement granted in 1988 as well as
21 10936 which is lot 19, and theirs was also on July
22 11th, 1988, is that correct?

23 WERNET: Correct.

24 IRVING: Okay. Yeah, we have those copies.

25 BLOOM: So both sides of this property have had--
0019

1 WERNET: Not both si--no. The--

2 IRVING: This one--

3 WERNET: --lot 22, which is to the east, the Giffin
4 property, to my knowledge has not been granted an
5 easement. The two properties to the west were
6 granted easements. The properties to the east, which
7 is 10912 to my knowledge was--was not--

8 BLOOM: Was not granted an easement.

9 WERNET: It's--and it's--it's higher as I think the
10 testimony previously was. There's a six-foot fall
11 from its property to--

12 BLOOM: Right.

13 WERNET: --our property. The--as I said, our request
14 is 1669 square feet. The pri--the previous approval
15 was 2,003 square feet. We did not know about the
16 2,003 square feet because it was not of record.

17 BLOOM: Right.

18 WERNET: All though it is valid.

19 BLOOM: Right.

20 WERNET: We are not--we would be willing to give up
21 the 1991 approval of the 2,003 square feet in return
22 for the approval of this one of si--which is actually
23 300 square feet less than what has already been
24 approved.

25 IRVING: And the petitioners on that were William
0020

1 Swift and Sue--

2 WERNET: Yes.
3 IRVING: --Swift? Is that correct?
4 WERNET: Uh-huh (affirmative).
5 IRVING: So what you're asking is that we void
6 petition #251/91 and just look at the present
7 petition?
8 WERNET: Well, as--in conjunction with the approval
9 of this one and assuming that this one ultimately
10 prevailed as an approval, we would be willing to
11 revoke the 1991 approval.
12 IRVING: Michelle--
13 BLOOM: I think--
14 IRVING: --can't you--
15 BLOOM: --that's just--
16 IRVING: --come up--
17 BLOOM: --causing more--
18 IRVING: --for a moment?
19 BLOOM: --confusion. Yeah, Michelle, would you--
20 IRVING: Have--since we found that this hadn't been
21 filed but all the paperwork had been done, has it
22 been filed?
23 WOOD: I could find no evidence that it had been
24 recorded. Approved, but not recorded.
25 IRVING: It has been filed. It was approved, but it
0021
1 wasn't ever recorded?
2 WOOD: Correct.
3 WERNET: Correct.
4 FISHERING: We can't--
5 WOOD: To our knowledge.
6 BLOOM: We can't what?
7 FISHERING: --we can't rescind that at this hearing.
8 BLOOM: Well, yeah.
9 IRVING: Right.
10 WERNET: No, no.
11 IRVING: Okay, don't confuse us.
12 WERNET: Okay.
13 PETERS: We can't rescind the--
14 WERNET: Never mind.
15 PETERS: --'91 at this hearing.
16 WERNET: No.
17 PETERS: Okay, but what we--what would be happening
18 if this were approved in this process is that it

19 would be approved and recorded--
20 WOOD: Correct.
21 WERNET: Correct.
22 PETERS: --which is what was not done with the '91
23 one.
24 WOOD: Correct.
25 PETERS: Okay.
0022
1 BLOOM: Okay, but that one would be recorded plus
2 this one?
3 WOOD: I--
4 BLOOM: The '91 one would never be recorded?
5 FISHERING: That's up to them.
6 BLOOM: Oh, that's up to them.
7 FISHERING: Uh-huh (affirmative).
8 BLOOM: Okay, but we--
9 FISHERING: It's been approved.
10 BLOOM: --but we wouldn't do anything with--
11 FISHERING: We have nothing--
12 BLOOM: --okay.
13 WOOD: This--
14 FISHERING: --in this matter.
15 WOOD: --the part that--
16 BLOOM: I have never done anything like this before.
17 This is absolutely--
18 WOOD: This petition--
19 BLOOM: --it's a comedy of errors, actually.
20 WOOD: --would clear up past omissions, I guess you
21 could say.
22 BLOOM: Okay.
23 WERNET: Yes.
24 WOOD: There would be no need to record 251 if this
25 is--

0023

1 WERNET: If this is approved.
2 WOOD: --371.
3 BLOOM: I--I understand. It's just--who would bring
4 up something that that hadn't been recorded in--
5 IRVING: But lot number 19 was granted their easement
6 and it was recorded?
7 WOOD: I don't know that it was recorded. I--I
8 looked and did not find whether or not it was
9 recorded. I don't want to say that it wasn't, but in

10 the time that I researched it I didn't find that--
11 IRVING: But it--
12 WOOD: --it was recorded.
13 IRVING: --but it definitely had been approved?
14 WOOD: But it had been approved.
15 IRVING: Okay.
16 BLOOM: Okay.
17 WERNET: And lot 20 had been approved also.
18 WOOD: And lot--
19 BLOOM: And lot 20 also.
20 IRVING: Right. Okay. Yeah.
21 BLOOM: Anything else, John?
22 WERNET: I believe everything else is already in the
23 record.
24 BLOOM: Thank you, very much.
25 WERNET: Thank you. I reserve rebuttal.

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1 IRVING: Oh, well, we'll--
2 BLOOM: Of course.
3 IRVING: --let you do that.
4 BLOOM: Why don't--
5 IRVING: Mr. Fishing, remember that.
6 FISHERING: Yeah, I noted it.
7 BLOOM: --or sit in the front or something because
8 I'm sure--
9 IRVING: Sit next to Mr. Federoff.
10 FISHERING: Here, sit--
11 IRVING: Come up here.
12 BLOOM: Oh, she'll sit--
13 IRVING: Go sit beside Bill, Michelle. Oh, we saw
14 she went to the youngling.
15 BLOOM: She went to Jim.
16 FISHERING: Yeah, I don't blame her.
17 WOOD: I don't even know his name.
18 BLOOM: Okay, anyone else to speak for the vacation?
19 Anyone else to speak for the vacation? If not,
20 anyone here to speak against the vacation? Anyone to
21 speak against the vacation? Good morning, Jim.
22 FEDEROFF: Good morning.
23 IRVING: Hi, Jim.
24 FEDEROFF: For the record, my name is Jim Federoff of
25 Federoff Law Firm. My office address is 904 South

0025

1 Calhoun Street here in Fort Wayne. I represent
2 Sherry Giffin who's the owner of lot 22 in Sycamore
3 section two which is the lot adjacent to the east of
4 the Minnick property, and I think Mrs. Minnick
5 testified at the initial hearing before the
6 commissioners. I've got a few other arguments to
7 advance on her behalf, and I'll go through those
8 briefly with you.

9 The--I--an observation I have with regard to
10 the prior approval, it seems like the petition before
11 you has a twofold purpose. One is to ratify in
12 effect the original or the prior approval in 1991 of
13 the vacation of the drainage easement to accommodate
14 the existing home. That was done by Bill Swift and
15 his wife back then who then were the owners of the
16 property. The second purpose is to accommodate new
17 construction of this planned addition which has been
18 described in the hearing.

19 The--I--there's clearly evidence that the
20 commissioners in '91 approved that vacation
21 ordinance. I see no need--I see no reason why
22 evidence of that approval couldn't be recorded to
23 make it a matter of public record. I don't think
24 there's anything that needs to happen now in order
25 for--to reaffirm or ratify that prior approval, all

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1 though the commissioners certainly can do that.

2 I think the--the key, though, is to focus on
3 the new construction because I think that's where the
4 issues arise and the objections arise. The--you
5 heard evidence, I think, at the initial hearing about
6 the--the need for architectural control approval and
7 the fact that it hadn't been given. I do have copies
8 of letters, three letters that I'd like to make part
9 of the record, and I have copies for you that confirm
10 that that architectural control committee approval
11 has not been--I'm not contending or suggesting that
12 the commissioners--that the approval has to be given
13 in order for the commissioners to approve the
14 vacation ordinance. There's really--there's two
15 things involved here.

16 BLOOM: Two, right.

17 FEDEROFF: They are proceeding--they can't proceed in

18 parallel courses. My observation is--is that unless
19 the Minnicks receive the architectural control
20 committee approval there's no reason, there's no
21 purpose for the commissioners to grant the approval
22 of the vacation of that drainage easement for the new
23 construction. If it's never going to be built
24 there's no reason to vacate the easement.

25 That original storm drainage plan was for
0027

1 Sycamore Hills, and I remember when the project went
2 through since I was representing the Plan Commission
3 at the time. There was a detailed review of that
4 project and drainage was an obvious issue and concern
5 because of topography as well as the ponds that were
6 created to become features in the golf course, and if
7 anything since that time there has been new
8 construction, new additions which has created
9 additional impervious surface, so if anything the
10 need for proper drainage has increased.

11 I think the--there's a significant legal
12 argument that exists and is involved in this
13 proceeding that I think the commissioners need to
14 consider, and it flows out of the Daniels case, the
15 Daniels vs. Allen County Plan Commission case which
16 I'm sure you recall, and in that case the--it
17 involved a vacation by the Plan Commission of
18 restricted covenants in a subdivision. An adjacent
19 lot owner argued that that was a taking of a private
20 property right by the government, and filed suit in
21 federal court for that taking, an unconstitutional
22 taking. The federal district court held in favor of
23 the property owner. It went up to the 7th Circuit,
24 and on appeal the U.S. Court of Appeals for the 7th
25 Circuit held that there needs to be a stated and
0028

1 clearly demonstrable proof of a public purpose before
2 government can take a private property right.

3 In this case, I think the vacation, if the
4 commissioners approve it, of the--that easement is a
5 taking of a private property right. It's clearly a
6 private property right that other adjacent owners
7 have. If government takes that private property
8 right it has to be for proper public purpose. Here

9 there's no proper public purpose. The only purpose
10 is private, and that is to accommodate the new
11 construction by the Minnicks.

12 Even if there were a proper public purpose,
13 which we don't think there is, then there could be a
14 claim for damages by the property owners against the
15 county, and I would argue that on balance, when you
16 consider the--the potential consequences to the
17 county of such an action, such a claim that it would,
18 in my opinion, argue against the approval of that--of
19 the vacation petition before you.

20 Another observation, this property--Sycamore
21 Hills is going to become part of the City of Fort
22 Wayne at the end of the year, and any issues like
23 vacation of covenants that would be presented next
24 year--excuse me, vacation of an easement, would
25 necessarily go to City Council and would be an issue

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1 that the city has to address, not the county.

2 IRVING: So, Jim, you're suggesting--and I've worked
3 with you for a long time--so, you're suggesting that
4 because this is going to be in an annexed area that
5 for the last three years we should not have acted on
6 anything, and that community that is being annexed
7 should have come to a stand-still?

8 FEDEROFF: No, of course not, Commissioner Irving,
9 and I--

10 IRVING: Well then why--why would that even be
11 brought up into this process?

12 FEDEROFF: My--the reason I make that observation is
13 there are a number of factors that are involved in
14 your decision making on this petition before you, and
15 I'd just like to have all of them considered. There
16 are the legal issues, there are political issues,
17 there's all kind of issues, so, again, that's not to
18 suggest that you shouldn't take action.

19 IRVING: But when you present something to Plan
20 Commission, and as I just got off Plan Commission,
21 you stand before us and argue about why that project
22 needs to be accepted and the processes need to have
23 the wheels turning before the annexation starts. Now
24 you're turning around and saying an argument that we
25 shouldn't make any type of decision because it's

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1 going to be annexed. Are you just making an argument
2 for both sides?

3 FEDEROFF: I'm--that is an observation I'm making.
4 I'm not suggesting and I'm not saying that you
5 shouldn't make a decision because it's coming on the
6 city. I just raised--

7 IRVING: Well, did you not just say that, though?

8 FEDEROFF: I mentioned that the--the fact that if a
9 decision isn't made now where there are potential
10 negative consequences to the county in terms of a
11 claim for damages or an unconstitutional taking,
12 defense costs, all of those things. Then that needs
13 to be considered.

14 PETERS: Mr. Federoff, one of the things I heard you
15 say was that the--the vacations were solely for the--
16 for a public purpose and so forth. What Mr. Wernet
17 had brought to our attention was the fact that
18 previously there were vacations done on lot 19 and
19 lot 20, I believe.

20 BLOOM: Uh-huh (affirmative).

21 PETERS: If that, indeed, was the case, were those
22 vacations done inappropriately, and is there any
23 reason that they should stand with the basis that
24 you've presented for the vacation being requested on
25 lot 21?

0031

1 FEDEROFF: The way that--as I understand the federal
2 case law has evolved in the taking jurisprudence
3 which basically comes out of the Daniels case is that
4 if you have a private property right, and in that
5 case a covenant was deemed to be a property right, in
6 this case an easement, which clearly is a property
7 right, if government takes that then that--and a
8 vacation is eliminating or taking that--that
9 easement--if there is that taking then the law
10 requires that it be for a proper public purpose. If
11 there is no proper public purpose it cannot be taken
12 by government. That the way the feder--that's the
13 case law that has developed under both the federal
14 constitution as well as the Indiana constitution.

15 BLOOM: Bill--

16 IRVING: Bill, we need--

17 BLOOM: --yeah--

18 IRVING: --we need a clarification because we do
19 vacations--

20 BLOOM: We do them--

21 IRVING: --all the time.--

22 BLOOM: --every month.

23 FISHERING: The question here, and I don't believe
24 there's on point and I am familiar with the case that
25 Jim's discussing because he argued it in the 7th

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1 Circuit, it's my best of my recollection. In that
2 case it was private restricted covenants--

3 IRVING: Right.

4 FISHERING: --contracts amongst the people. This is
5 a public easement. I don't believe that it's a
6 private easement. It would be more similar to your
7 vacation of the street which you have the absolute
8 right to do with very--there are some very small
9 limitations on your ability to eliminate a street,
10 but otherwise at the current time I believe the law
11 to be you can vacate public easements--

12 IRVING: Right.

13 FISHERING: --without ramification. Could that law
14 change? Probably, but at the current time I don't
15 perceive under the case he's citing to be a
16 particular problem.

17 IRVING: Well, I--Commissioner Bloom was on Plan
18 Commission when the Daniels case first started, and,
19 lucky for you, Nelson, it was completed before you
20 took Plan Commission, and it took a long time, so
21 that's why I'm--I'm a little confused at exactly the
22 point that you're trying to make because I'm not sure
23 you're comparing apples to apples.

24 FEDEROFF: Well, I guess that's a point of contention
25 or a point that can be argued. I do not see this

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1 particular drainage easement as being a public
2 easement. I think it's for the benefit of adjacent
3 properties to allow in Sycamore which is where that
4 easement was created by virtue of the platting to
5 accommodate surface water drainage from those lots
6 and from further east to the street and to the west
7 into the pond that is adjacent to the north of these

8 lots, so it's not, I think, akin to a--a public
9 street or something that is--that can be used by
10 members of the general public. I think it's--it's
11 purely private, created because of the platting
12 process.

13 PETERS: Help me understand a little bit, and
14 Michelle, you may need to jump in here, are we not
15 being requested to vacate part of the easement which
16 is already under Mr. Minnick's home?

17 IRVING: Yes.

18 FEDEROFF: That is my understanding, that--that it
19 was a two-fold purpose in the--

20 PETERS: So--

21 FEDEROFF: --petition.

22 PETERS: --I--you know, I--I mean I guess I'm a
23 little bit confused in that space already seems to be
24 occupied. I guess you can argue public purpose,
25 private purpose, what have you, but I mean, if we are

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1 being asked to kind of make good something that's
2 already in effect, I'm a little bit confused how we
3 could do anything but.

4 FEDEROFF: We're not here to challenge the 1991
5 approval of the commissioners--

6 BLOOM: Right.

7 FEDEROFF: --in vacating that--

8 BLOOM: Right.

9 FEDEROFF: --that drainage easement. That matter was
10 previously decided, not challenged, occurred many
11 years ago--

12 BLOOM: Right.

13 FEDEROFF: --and I honestly don't think that it's
14 necessary to do it again. I think that evidence of
15 that prior approval can be recorded to make it a
16 matter of constructive notice, but I don't think
17 there's any need to--to say the same thing again 14
18 years later.

19 BLOOM: In other words, you're saying if the 1991
20 vacation that was approved was recorded that this one
21 wouldn't be necessary?

22 FEDEROFF: That's my opinion.

23 IRVING: Well, that's his--

24 FEDEROFF: And there--

25 IRVING: --and Michelle, that's not exactly right, is
0035

1 it?

2 BLOOM: Well, this is a different location, isn't it?

3 FEDEROFF: The--

4 PETERS: It's 300 feet less.

5 BLOOM: It's not the exact--

6 PETERS: No.

7 WOOD: There's an additional request for square

8 footage beyond the existing--

9 BLOOM: Beyond, right.

10 PETERS: Oh, okay.

11 FEDEROFF: Uh-huh (affirmative).

12 WOOD: So he would need to petition--

13 BLOOM: Yeah.

14 WOOD: --if that had been recorded he would just need

15 to petition for the second story--

16 BLOOM: Right.

17 WOOD: --porch. The part that--

18 BLOOM: Right. No, no, I got it.

19 IRVING: See the--

20 BLOOM: Yeah, I got it.

21 IRVING: Okay.

22 BLOOM: Thank you.

23 FEDEROFF: Those are all the--the points I wish to

24 make today.

25 BLOOM: Thank you.

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1 PETERS: Thank you.

2 IRVING: Thank you, Jim.

3 BLOOM: Is there anyone else speaking against the

4 vacation? Anyone else against the vacation? Good

5 morning, Mr. Riebenack.

6 RIEBENACK: Good morning.

7 IRVING: Good morning.

8 RIEBENACK: For the record, my name is Walter

9 Riebenack, and, of course, I live on lot 20, 10928

10 Birkdale Court. Mr. Logan will represent my wife,

11 but I have a few--I want to set the record straight.

12 The vacations of part of these drainage--surface

13 drainage easements for lot 19, for lot 20, and for

14 21, the 1991 easement that was not recorded was done

15 solely to accommodate the buildings that were going

16 to be placed on those lots, pre-construction. The
17 reason for the 1991 vacation of part of this easement
18 on lot 21 was done by Bill and Sue Swift in
19 conjunction with the home builder, Joe Sullivan, for
20 the sole purpose of accommodating the home that was
21 not yet construction--constructed on that lot. That
22 was true for lot 20 and for lot 19, and the vacation
23 portion of the easement that was vacated, or the ea--
24 the easement--portion of the easement that was
25 vacated was solely to accommodate the footprint of
0037

1 the homes that were built there, okay?

2 Now, Mr. Minnick is in violation not only of
3 the 1991 vacation because his office now extends over
4 the present easement even with the vacation of the
5 1991 easement, okay? So--so the idea that these
6 vacations were done, well, what's good for one is
7 good for all is not true. When the home that Mr.
8 Minnick purchased and had absolute knowledge that
9 these easements were there, and if you look at his
10 deed you will see that, okay? And you look at his
11 surveys you will see that, that he had knowledge of
12 this. I find it very disingenuous for him to be here
13 after encroaching on the easement already and wanting
14 an additional vacation.

15 But my key point is to set the record
16 straight as to why lot 19, 20, and 21 had portions of
17 this easement vacated, very small portions I might
18 add, to accommodate a corner of a house or something
19 like that. That was it.

20 There had been talk about the 1991 easement
21 and how it affects this present petition for
22 vacation. They're not the same, okay? I think Mr.
23 Wernet pointed out that this second bite of the
24 apple, if you will, you see, would be in addition to
25 the 1991 easement, so, again, you know, that is--that
0038

1 is not the same. The 1991 easement is fine. It was
2 done to accommodate the home that was built on the
3 property which Mr. Minnick occupies, and that's it,
4 okay?

5 The discussion about the legalities, and as
6 you may or may not know, I practiced law for many

7 years here, in my understanding of the easement law
8 is that in any easement, and I pointed this out at
9 the last hearing on this, there's always a servient
10 property and a dominant property. Ms. Giffin and lot
11 20--lot 22 and lot 20 are the dominant properties
12 here. The easement exists for our benefit. It may
13 exist for the benefit of other property owners, but
14 there is no doubt that this easement exists for our
15 surface water to drain across this easement to reach
16 the pond. My property is six foot higher than Mr.
17 Minnick's property. My property drains onto his
18 property.

19 IRVING: Mr. Riebenack, did--and refresh my memory,
20 or Mr. Fishing, Michelle--did our surveyor--in the
21 record did he not state that--or we had paperwork--I
22 can't pull it out of my brain right now--that he
23 approved this?

24 WOOD: Yes, there--we do have documentation from the
25 Surveyor's Office that they stated that the ease-
0039

1 this portion of the easement was not needed for the
2 drainage, so they--therefore they do not object to
3 the vacation of this portion of the easement.

4 IRVING: I just wanted to make sure. So you're
5 disagreeing with our county surveyor?

6 RIEBENACK: Yes, I am.

7 IRVING: Okay. That's just what I wanted to find
8 out. I want to make sure--

9 RIEBENACK: Absolutely.

10 IRVING: --that I remember correctly.

11 RIEBENACK: Because I live there.

12 IRVING: Okay.

13 RIEBENACK: See, Mr. Minnick is new to the
14 neighborhood. He hasn't--in fact, he's only lived in
15 the house not--not even a year, if that long. Maybe
16 six months at most.

17 IRVING: Boy, you've really riled your neighbors up
18 in six months, haven't you?

19 RIEBENACK: So he doesn't know what can occur during
20 the winter when there's freezing there. He doesn't
21 know that. The storm system that exists there and
22 the big storm sewer drain that runs down from the
23 three catch basins at the intersection of Birkdale

24 Lane and Birkdale Court and flow through that huge
25 pipe that flows into the pond, you see, when that
0040

1 stuff gets clogged up that intersection becomes very
2 icy, okay? So you start chewing away at this
3 easement and you've got problems. You've got traffic
4 problems, okay?

5 IRVING: How does it get clogged up? With ice or
6 limbs or--

7 RIEBENACK: All of the above. All of the above.
8 Myself and the neighbor across the street whose
9 property drains into those, we get out there
10 regularly and clean out the debris.

11 PETERS: Mr. Riebenack--

12 RIEBENACK: I made--

13 PETERS: --I'm sorry--

14 RIEBENACK: --go ahead. You go right ahead.

15 PETERS: --do you see the granting of this easement
16 significantly changing the use of the land as it is
17 right? I guess where I'm going, I'm concerned that
18 we're dealing with an aesthetic issue versus a
19 vacation or versus an easement issue. The--the
20 aesthetic issue is one that I believe the
21 architectural control committee has the ability to
22 deal with at the more local level as it were. The--
23 the easement issue, of course, is--is one that could
24 or couldn't be resolved today, and I guess my
25 question is, if the easement weren't granted and the

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1 purpose or the use of the land isn't significantly
2 changed, then just by granting or not granting an
3 easement, it's not going to change the function of
4 the draining. I mean, that water's still going to go
5 where it's going to go. Only--I would say only if
6 the architectural committee would permit some
7 utilization of that land other than what they've
8 previously permitted would there be impediments to
9 the drainage doing the types of things that it ought
10 to--ought to do. I mean, am I right? Am I wrong?
11 Is this an ar--is this an aesthetic issue or a
12 drainage issue?

13 RIEBENACK: In spite of what Mr. Larson said, and I
14 was not at that hearing unfortunately, I look upon

15 this as being very critical to my property from a
16 drainage issue--
17 PETERS: Okay.
18 RIEBENACK: --okay? I have a crack in my basement
19 wall, okay? It's lower level, all right? When there
20 is a heavy rain the hydrostatic pressure just forces
21 water through that. Now that's what happens. Mr.
22 Federoff mentioned the--the continuing development of
23 Aboite Township, specifically Sycamore Hills. What's
24 happening in Sycamore Hills and right there on the
25 corner of Birkdale Lane and Sycamore Hills Drive
0042

1 there's a home. People bought it. They went ahead
2 and put a room addition on, okay? More rooftop, all
3 right? That property flows down across the Finnin's
4 property and, of course, into the whole drainage
5 system for that area.

6 My property, of course, as we know if you
7 look at it will flow across the easement and into the
8 pond. What's happening in Sycamore is people are
9 adding room additions. In addition to that there are
10 new homes being still built there. There are vacant
11 lots on Birkdale Court right up from lot 22 owned by
12 Mr. Hefner, okay? And sooner or later those lots are
13 going to be built on, which is going to exacerbate
14 the drainage problem. And I'm talking surface
15 drainage here as well as the storm drainage. Because
16 these problems are getting worse. They're not
17 getting better.

18 Other people, when Sycamore was developed
19 back in 1988, you had--you had two-car garages.
20 People say, well, two cars, you know, that's passe
21 now. We need three-car garages, so let's build on,
22 have another garage. Three-car garages are going to
23 four-car garages. On Carnoustie Drive, the big white
24 home, 10-car garage.

25 BLOOM: I've seen it.

0043

1 RIEBENACK: Ten [10] cars.

2 BLOOM: No, I've seen it.

3 RIEBENACK: You see, so that's what happened. So, as
4 Mr. Federoff said, this place is becoming more and
5 more impervious to drainage and this is getting

6 worse. It's not getting better. Any obstruction to
7 this easement or the vacation of this easement with--
8 with continuing obstruction going into the easement
9 because of whatever kind of building you want, be it
10 landscaping with huge rocks, which Mr. Minnick has
11 proposed, okay? Around the area of the pond, you
12 see, as well as the construction on his house, he's
13 going to make it worse. So for me it's not
14 aesthetics. It's purely drainage. It affects my
15 property and I don't want it changed. I reserve the
16 right, if Mr. Wernet did, to come back for rebuttal.
17 Thank you.

18 BLOOM: Thank you. Anyone else to speak against the
19 vacation? Good morning, Denny.

20 LOGAN: Good morning. Dennis Logan, attorney with
21 Rothberg, Logan, & Warsco, 2100 National City Center.
22 My client, Mr. Riebenack, does a very able job of
23 representing himself in these matters. I am here
24 also for his wife. I would just like to add a couple
25 of things if I might to support what Mr. Riebenack
0044

1 said concerning the winter situation and also with
2 reference to Mr. Finnin. Mr. Finnin did address a
3 letter dated May 16th, 2005 to Commissioner Peters,
4 and I'd like to just make sure that everyone has a
5 copy of that. Mr. Finnin is--lives behind on the--on
6 the south side of Birkdale Court, and he is speaking
7 of--to some of the--in particular the winter drainage
8 issues that occur--

9 BLOOM: Thank you.

10 LOGAN: --you're welcome. So there are, as I un--as
11 I recall, three major storm drains in the general
12 location of the Minnicks' house and just east of the
13 Minnicks' house between the Minnicks and the Giffins.
14 There's a big greenway that is part of this storm
15 drainage easement, and so Mr. Finnin's letter speaks
16 to that situation and his concern as a concerned
17 neighbor about potential further drainage issues.

18 In addition Mr. Riebenack has consulted with
19 a construction expert, a Mr. John Heim, and Mr. Heim
20 addressed a letter dated May 10th to Sherry Giffin
21 and to Mary Ann Riebenack, and I'd also like to make
22 that letter part of the record if I might, please.

23 BLOOM: Certainly.
24 LOGAN: Thank you.
25 PETERS: Thank you.

0045

1 BLOOM: Thank you, Denny.
2 IRVING: Thank you.
3 LOGAN: Mr. Heim is a veteran, a local construction
4 person. I'm given to understand that he worked with
5 Werm--Wermuth Construction, Harley Graham, the Yost
6 companies, and prior to his retirement with Red Roof
7 Inns where he was involved in a variety of
8 construction related issues including drainage
9 issues. Mr. Heim has looked at this situation and
10 goes into some--some detail with respect to his
11 factual understandings and in--in his opinion he says
12 that the vacation and any subsequent obstruction of
13 any of these existing easements could have a harmful
14 effect on the lots identified and the houses on those
15 lots. And I note that he says, "Could," and not,
16 "Would." He's not given a definitive opinion, but I
17 think what he is saying here is, you know, from my
18 experience this looks like a difficult situation, a
19 potentially troublesome situation, and we think this
20 supports recommending against the vacation of the
21 petition.

22 I would also like to put into the record a
23 photograph that shows the contour of the land between
24 the Minnicks' lot and the Riebenack's lot if I might.

25 BLOOM: Uh-huh (affirmative).

0046

1 LOGAN: I only have one of these.
2 BLOOM: We can share.
3 IRVING: Denny, since you submitted this can I ask a
4 question here?
5 LOGAN: Certainly.
6 IRVING: It says in the--page two in the first
7 paragraph it says, "Some of the surface water that is
8 flowing across the north side to the lot is coming
9 from Sycamore Hills Golf Course." Last year--
10 BLOOM: We've been out there.
11 IRVING: --about this time, maybe it was--I was knee-
12 deep in water and it was flood plain water. Is this
13 part of the golf course--

14 LOGAN: Are you referring to Mr. Finnin's letter or
15 Mr.--

16 BLOOM: No--

17 LOGAN: --Heim's letter?

18 BLOOM: --Mr. Heim's.

19 IRVING: It says, "Some of the surface water that is
20 flowing across--"

21 BLOOM: Second page.

22 IRVING: "--the north of the lots is coming from
23 Sycamore Hills Golf Course." That was a problem that
24 was discussed with Mr. Kelley last year--

25 BLOOM: The golf course--the flood--

0047

1 IRVING: --the manage--I apologize--the pro out
2 there.

3 LOGAN: Okay.

4 MALE VOICE FROM AUDIENCE: Bob Kruse.

5 IRVING: Bob, that's who it was. The maintenance
6 people, the surveyor, we all went out there, and part
7 of the difficulty on this, and that's why it's--

8 it's--golf courses are built in flood plain, and then
9 when we got to looking at some of the bridges and
10 things like that, that there were trees that had
11 fallen over in the brush, this type. So I'm

12 wondering, and not knowing this was going to be put--

13 LOGAN: Right.

14 IRVING: --in evidence, is the water that is coming
15 from the golf course in this area, is it flood plain?

16 Or you don't know?

17 LOGAN: I--I will answer that question to the best of
18 my ability. I have walked the--the terrain from lot
19 26--

20 IRVING: Uh-huh (affirmative).

21 LOGAN: --to the east all the way down to the
22 boundary of Mrs. Giffin's lot. And you may recall in
23 the April 27th public hearing I introduced into
24 evidence a--a private drainage easement that the
25 owners of lot 26, 25, 24, 23, 22, and the Swifts

0048

1 signed it because at the time they were also the
2 owners of lot 21, all though their property was not
3 to be benefitted by this easement.

4 The theory behind all of that work, and these

5 people--the owners of those lots paid out of their
6 own pocket to put in a drainage system that would
7 prevent golf course water, if you will, from, you
8 know, damaging their--their properties, and so that
9 easement flows all the way along the north side of
10 all those lots and into the drainage pond. From just
11 my common sense walking of--of the terrain, it does
12 not look like water from the golf course could--could
13 contribute to what Mr. Heim is speaking of here.

14 It is possible, I suppose, on Sherry Giffin's
15 lot and possibly the Minnicks' lot, but their--all
16 though I don't think the Minnicks because I think the
17 golf course--or the pond would protect--the pond is
18 going to pick up any water flowing onto lot 21, but
19 possibly Sherry Giffin's lot would be impacted
20 slightly by golf course water, but this whole
21 drainage system from 1991 was designed to--to help
22 the golf course and help--and help the--the owners
23 there.

24 IRVING: Okay.

25 LOGAN: May I introduce the photo into evidence,
0049

1 please?

2 BLOOM: Yes, thank you. We can share that.

3 LOGAN: This shows the Minnicks' home here, the
4 Riebenacks' home here. You can kind of see the slope
5 of the terrain. You can see how close the Minnicks
6 current residence without improvement comes to the
7 water--

8 BLOOM: Uh-huh (affirmative).

9 LOGAN: --and the concern that the Riebenacks have
10 about a structure going up here impeding the natural
11 flow of water causing some form of back-up at that
12 juncture.

13 IRVING: Is this property not right on the water?

14 LOGAN: The Minnicks' property or the--

15 IRVING: No.

16 LOGAN: --Riebenacks'?

17 IRVING: This is--this is Minnicks'. This one looks
18 like it's right on the water. I was out there last
19 week--I could have walked away with all the home.
20 There wasn't anybody around--but that one is, like,
21 right on--the Minnicks' is not as close to the water

22 as--I don't know who these people are. Lot 21?

23 Whoever they are.

24 LOGAN: Twenty-one [21] is the Minnicks.

25 ELSER: That's the Minnicks.

0050

1 IRVING: The 21 is the Minnicks?

2 LOGAN: Twenty-one [21] is the Minnicks. And 20 is

3 Riebenack.

4 IRVING: Twenty [20] is Riebenack? Okay. And

5 Giffins' here, and then this one's right here.

6 LOGAN: And twenty--22 is Giffin.

7 IRVING: Okay.

8 LOGAN: So that--that's ri--I would concur--

9 IRVING: That is--

10 LOGAN: --Commissioner Irving--

11 IRVING: --the closest.

12 LOGAN: --that--that the Minnicks' lot or improvement

13 is very close to the water already, and we're

14 concerned, then--

15 IRVING: Okay.

16 LOGAN: --about further improving that building--

17 IRVING: On stilts.

18 LOGAN: --into--on stilts or otherwise, and further

19 impacting drainage out there.

20 PETERS: Mr. Logan, your comments kind of go back to

21 the question that I asked earlier, and I understand

22 the concern, and that is with construction further

23 impeding the drainage. But is that not an issue that

24 the architectural control committee has oversight of?

25 So regardless of what we do with the vacation, the

0051

1 archi--the architectural control committee is the one

2 who takes the last bite out of the apple.

3 LOGAN: I appreciate that question at this juncture

4 because that leads me into the request that we were

5 going to make, and that is that you simply refer this

6 to the architectural control committee for further

7 action. Take yourselves out of the middle of the

8 heat and let the architectural control committee go

9 about working this out on a local level. And I think

10 we all agree that that needs to happen at some point

11 in time, and Mr. Federoff during his presentation put

12 into record letters from various members of the

13 architectural control committee indicating that they
14 had not approved this, and so we would respectfully
15 request that you refer this to the proper
16 architectural control committees of Sycamore Hills
17 Association as well as the Birkdale Association for
18 their further action before you take any action on
19 this.

20 And alternatively what we would respectfully
21 request is if you see fit to grant this request, that
22 you make it clear in the record that before any
23 building permits be issued for this project that
24 appropriate architectural control committee approval
25 be granted. One of the main concerns, and I think it
0052

1 came out very clearly in the April 27th public
2 hearing, was that there hasn't been a--a proper level
3 of communication--

4 BLOOM: Right.

5 LOGAN: --over this matter. Unfortunately I don't
6 think that's improved any since April 27th. I--if
7 anything I think these legal proceedings are--are
8 probably making things more hostile in terms of the
9 relations and the needed communication here. But I
10 think we all agree--

11 IRVING: Right, right.

12 LOGAN: --that the architectural control committee is
13 the proper place for these sorts of things to be
14 hashed out, and so that would be our--our request.
15 Number one, refer it to them. If you don't feel
16 compelled to do that but would rather make a
17 decision, please make it clear in the decision that--
18 that any building permit issuance is subject to the
19 proper approval of architectural control committees
20 in place here.

21 BLOOM: We do not have a copy--we have a copy that
22 shows us that they declined the room addition, but
23 Mr. Larson at the last meeting suggested that we--
24 they had approved it until they found out that the
25 vacation had not been recorded. If the engineering-

0053

1 by the way, has an engineer on any of these
2 properties been consulted?

3 LOGAN: I don't know what Mr. Heim's qualifications

4 are. I do not believe him to be a civil engineer, a
5 registered--

6 BLOOM: Because we--

7 LOGAN: --civil engineer.

8 BLOOM: --were going to have some sort--because it's
9 pretty hard for us when we sit here granting or not

10 granting vacations, doing the Drainage Board. We're

11 using our professionals--

12 LOGAN: Right.

13 BLOOM: --and, I mean, your--your client is saying he

14 doesn't agree with him, but I'm wondering if there

15 is--is someone else that has been involved in this, a

16 professional.

17 LOGAN: There hasn't been to date--

18 BLOOM: Okay.

19 LOGAN: --and I think that goes back to the

20 communication issue. I think it's fair to say that

21 it's completely broken down at this--

22 IRVING: Yeah.

23 LOGAN: --at this stage.

24 BLOOM: Yeah.

25 IRVING: Before we go any father, too, Michelle, I

0054

1 think maybe for the record so that everyone here in

2 our audience understands, why don't you talk a little

3 bit about his request and what we are able to do and

4 what we aren't able to do?

5 WOOD: As far as the first request, deferring to

6 architectural control, I think you would just not act

7 on this.

8 IRVING: But it would eventually come back to us

9 again?

10 WOOD: It would eventually--

11 IRVING: Yes.

12 WOOD: --come back to you. On the condition--

13 conditioning the vacation, to my knowledge you cannot

14 condition a vacation. You either vacate it or you

15 don't vacate it. There--there aren't findings of

16 fact or conditions of the vacation. And then--

17 IRVING: And I would venture to say that the Minnick

18 construction would start on this, that every neighbor

19 would be calling the Building Department to make sure

20 that he's got his proper permits. You know, there's

21 no one more, and I know there's a few of you out here
22 that understand this, the commissioners like
23 neighbors to get along. You know, our Building
24 Department likes neighbors to get along.
25 BLOOM: Of course we do.

0055

1 IRVING: We are--it is very distressing every time
2 that we have an issue that comes that neighbors
3 cannot get this worked out, because I would venture
4 to say when this goes to the architectural control
5 committee at Sycamore that you're going to have
6 another huge division. If--if--I hope I can talk for
7 my two partners. There have been times that we have
8 asked the neighbors to come back in a half an hour
9 and see if they can't knock this out amongst
10 themselves first.

11 BLOOM: Sometimes it happens.

12 IRVING: And sometimes it happens, and it sometimes
13 it doesn't. Obviously, I live in a neighborhood,
14 too. Luckily, knock on wood, my neighbors and I have
15 been able to--to work together on things. But the
16 commissioners do not like to get in the middle of
17 these. The second part of it, you know, all of you
18 that are here that are attorneys are very astute
19 attorneys and you understand the law, and you realize
20 that basically in a big portion of this that our
21 hands are tied. I mean, you can give case study, but
22 we've already had our discussion with our attorney on
23 this, too, and also I had a talk with our Plan
24 Commission attorney, too, to make sure that we were
25 on the right track.

0056

1 BLOOM: And the surveyor. We chatted with the
2 surveyor.

3 IRVING: And the surveyor, too. So saying that, I
4 would hope that no matter how the decision comes out
5 today you are all fine people, you are good people in
6 our community, you are valuable to our community, and
7 at some point maybe you can get together and decide
8 that maybe there's larger issues or that there is
9 good in all of you.

10 PETERS: I'd like to ask Michelle a question real
11 quick, and I think this kind of dovetails on

12 Commissioner Irving's question, and that is, is the
13 Building Department likely to approve something that
14 would be in conflict with the tenets of the
15 neighborhood?

16 BLOOM: Well, they're just applying for a building--

17 PETERS: Rules and regulations?

18 BLOOM: --permit, aren't they?

19 WOOD: I don't want to speak for the Building
20 Department, but I can start by speaking for the
21 Department of Planning Services. They would need to
22 come in and get an improvement location permit first
23 from our department. If it meets the ordinance, if
24 it meets all setbacks, which judging by the permit
25 that has already been submitted which started this
0057

1 whole ball rolling--

2 BLOOM: Right.

3 WOOD: --it met setbacks. The--the building line is
4 in the middle of the lake, so he has--there's--
5 there's plenty of room as far as building area.

6 BLOOM: Okay.

7 WOOD: If it meets the ordinance we can issue the
8 permit--we have to issue the permit. Architectural
9 control, those are private covenants, private
10 agreements. The ordinance does not uphold those
11 private agreements, so we would have no choice but to
12 issue the permit if it meets the ordinance.

13 BLOOM: Right.

14 WOOD: Then that permit gets sent to the Building
15 Department. Again, I can't speak for them, but I
16 would--I would guess that their ordinance works a lot
17 like ours in that if it meets--if it meets all
18 specifications then they can't uphold a permit for a
19 private architectural control or a neighbor's wishes.

20 PETERS: Okay, thanks.

21 PETERS: Well, Mr. Logan, back to your--suppose this
22 were not referred back to the architectural control
23 committee. The second alternative that you had
24 hoped, can you restate that?

25 LOGAN: Well, it was--I think Michelle said that that
0058

1 can't happen. What I was asking is that--that the
2 commissioners make it clear to the Building

3 Department that your approval is contingent upon the
4 architectural control committee--

5 BLOOM: We can't--

6 PETERS: Right.

7 BLOOM: --we can't--

8 LOGAN: --approval. What I'm trying--

9 BLOOM: --we can't--

10 LOGAN: --to avoid is a lawsuit here, because my
11 concern--

12 BLOOM: --we can't do that.

13 LOGAN: --is that the improvement location permit is
14 given, notwithstanding no approval from the
15 architectural control committees, the building permit
16 is issued on the same--on the same basis, and now we
17 have the--either the neighbors or the Sycamore Hills
18 Association, you know, going to the courthouse,
19 either state or federal court depending upon what the
20 theory is, and our--our neighborhood dispute has just
21 escalated into a federal lawsuit. That's the
22 potential I'm trying to avert by urging these matters
23 on the commissioners.

24 IRVING: Autumn Ridge did that and they lost, and
25 that was--it was definitely money not well spent. I

0059

1 wasn't a part of it. I had nothing to do with it,
2 but I would hope that somehow one way or the other
3 that the neighbors can get this thing worked out, and
4 the architectural control, however it comes out this
5 way.

6 BLOOM: Anything else?

7 LOGAN: No.

8 BLOOM: Thank you.

9 LOGAN: Thank you, very much.

10 PETERS: Thank you.

11 BLOOM: Is there anyone else to speak against the
12 vacation? Anyone else? Good morning.

13 GIFFIN: Good morning.

14 PETERS: Good morning.

15 GIFFIN: My name is Sherry Giffin. I'm the home
16 owner of lot 22. There are several things I wish to
17 say to you. Number one, you brought up the fact of
18 consulting a civil engineer, and I am in the process
19 of that. I was given the name of Mr. Scott Lougheed

20 who's a very reputable.

21 IRVING: Uh-huh (affirmative).

22 BLOOM: Absolutely.

23 GIFFIN: However he can't just drop everything he's
24 doing and--and come over, you know, within a week.
25 He has other things he's had scheduled for months.

0060

1 Now, at some point he can come over and do this, but
2 he hasn't been able to come over yet, so I--I'm just
3 telling you that he would be who I would choose--have
4 chosen.

5 In the winter--the problem we have in the
6 winter is when the streets are plowed they plow the
7 snow up and cover--

8 BLOOM: Uh-huh (affirmative).

9 GIFFIN: --the drainage basins. Therefore the water
10 sits in the middle of the intersection. And that's
11 why I actually go out, as my neighbors know, I'm the
12 one--I'm a woman who I roll up my sleeves and do what
13 I have to do. I actually go out and dig out the
14 basin in front of my property as best I can. But not
15 everyone does that, so there is a icy problem. In
16 fact, sometimes it's hard even to get up my driveway
17 because there's ice--I have to turn and kind of then
18 go, and if I can't get traction at the bottom, where
19 am I going to get it?

20 Number--well, another thing is that Mr.
21 Minnick's attorney refers to this improvement as a
22 deck. Michelle referred to it as a porch. I talked
23 to Christie Shoaf, and she has an architectural
24 drawing that shows both a porch and deck
25 improvements. Now I'm confused as to what it

0061

1 actually proposed.

2 BLOOM: Well, that would be the decision that you two
3 would have to make, the architectural committee and
4 Mr. Minnick.

5 GIFFIN: But you're basically saying that he can do
6 whatever he wants no matter what we decide on because
7 they--

8 IRVING: But that's not--

9 GIFFIN: --override Sycamore--

10 IRVING: --before us--

11 GIFFIN: --they override--
12 BLOOM: But that's--but that's not our decision.
13 GIFFIN: Okay, but what you just said to me makes
14 no--it's irrelevant.
15 BLOOM: No, no. I didn't say that. We're either
16 going to or not going to vacate this portion of the
17 drain. It has nothing to do with the architectural
18 committee and Mr. Minnick. I mean, we're--we're not
19 making that decision. Remember the first time, and
20 it's been so long ago, that I suggested that if it's
21 strictly a communication problem--it's obviously not
22 a drainage problem, that it's a communication
23 problem, and please settle this. That's not our job
24 up here. Our job is to say, "Here is the opinion
25 that we have on the drain situation," not the
0062

1 architectural.
2 GIFFIN: But who's to say he's not putting in a
3 concrete foundation, too? We have no--I have--
4 IRVING: That's--
5 GIFFIN: --no idea what--
6 IRVING: --that's for Plan Commission.
7 BLOOM: That's Plan Commission, the Building
8 Department. That's isn't our decision.
9 GIFFIN: Okay, whatever. Mr. Minnick did--you talked
10 about going to the architectural control committee.
11 To my knowledge he did glass in a screened-in porch
12 which made it a more permanent structure and got no
13 architectural approval for that.
14 BLOOM: Who did this?
15 GIFFIN: Mr. Minnick. Is that correct?
16 MINNICK: That's incorrect.
17 GIFFIN: Did you get architectural control--did you
18 get permission from Birkdale?
19 IRVING: No, we can't--
20 MINNICK: (Indiscernible.)
21 BLOOM: Is there any new information that we need--
22 GIFFIN: Yes.
23 BLOOM: --to know that we haven't heard in the prior
24 two meetings?
25 GIFFIN: Yes, there is.

0063

1 BLOOM: Okay.

2 GIFFIN: The property to the east of my house did put
3 in a retaining wall which does increase the water
4 flow between my house and his house which does
5 increase the drainage on my property.

6 BLOOM: To the east of you? What--what does that
7 have to do Mr. Minnick's property?

8 GIFFIN: Well, the water is now flowing down between
9 my house down into the drainage area in the back of
10 my house.

11 BLOOM: But that's at--

12 GIFFIN: And that comes--

13 BLOOM: --10834, the next lot 23?

14 GIFFIN: To--yes, to the--

15 BLOOM: But what has--

16 GIFFIN: --west--

17 BLOOM: --what--

18 GIFFIN: --to the--

19 BLOOM: --does that have to do--

20 GIFFIN: --to the east--

21 BLOOM: --with Mr. Minnick's property?

22 GIFFIN: Because the retaining wall is forcing water
23 in a different direction.

24 BLOOM: But that's--

25 GIFFIN: And it's onto--

0064

1 BLOOM: --not Mr.--

2 GIFFIN: --property, which, in turn, goes on to--into
3 the drainage pond.

4 IRVING: But see, that's where your architectural
5 control committee needs to be more active, because
6 when you put up permanent structures like that--

7 BLOOM: Yeah.

8 IRVING: --and it causes a--flow of water problems,
9 that needs to go through your architectural control
10 committee, that needs to go through the Surveyor's
11 Office. That has nothing to do with the petition
12 that's before us.

13 GIFFIN: But it's putting more water onto my
14 property.

15 IRVING: Then you need to talk to the--

16 BLOOM: But from--

17 IRVING: --Surveyor's Office.

18 BLOOM: --a different direction.

19 GIFFIN: But it still needs to drain in the same
20 direction to the pond.
21 IRVING: You need to go to the architectural control
22 committee, and if that is true with--with going to
23 the surveyor you need to go, if that is a true
24 statement, and he will be able to figure that out.
25 Then you need to go to the architectural control
0065

1 committee and ask that that be removed. Am I right,
2 Mr. Fishing?
3 FISHERING: Uh-huh (affirmative).
4 IRVING: That--that is not a consideration in here.
5 BLOOM: It sounds like a lot bigger problem than the
6 one we're facing this morning.
7 GIFFIN: Well, no, there's--
8 BLOOM: If someone put up a retention wall.
9 GIFFIN: There is--there is--all I want is my--get
10 to--my point across--
11 BLOOM: Is redirecting--
12 GIFFIN: --is that--
13 BLOOM: --the water.
14 GIFFIN: --there is an awful lot of water that goes
15 onto my property from the golf course--
16 BLOOM: Uh-huh (affirmative).
17 GIFFIN: --from Mr. Larson, Mr. Hefner, Mr.
18 Warshauer, and--
19 BLOOM: Uh-huh (affirmative).
20 GIFFIN: --I just--I'm just totally against any
21 easement that is, you know, any change in the
22 easement. I mean, unless you want to come out in a
23 rain storm. I mean, the only way to find a roof leak
24 sometimes is to come out and look at the roof when
25 it's raining. But--

0066

1 BLOOM: But, Mrs. Giffin, the thing that we're
2 getting to is we have been asked to make a decision
3 on a small portion of the drain on Mr. Minnick's
4 property. All of these other things have nothing to
5 do with this.
6 GIFFIN: But if you vacate that he can do whatever he
7 wants on that. He can put up a concrete wall,
8 correct?
9 BLOOM: No.

10 IRVING: No, Mr. Minnick--your archi--no, that's--

11 BLOOM: No.

12 IRVING: --you still have to go before the
13 architectural control committee, and it--the plans
14 still have to be submitted to the Department of
15 Planning Services.

16 BLOOM: Did the man on the other side of you which
17 has nothing to do with you get permission to redirect
18 this water onto you?

19 GIFFIN: I have no idea.

20 BLOOM: Well, that's--that should have been the
21 architectural committee, don't you think? I mean,
22 that's serious.

23 GIFFIN: Yeah, but they follow the rules.

24 BLOOM: I've never had a vacation like this ever.

25 I've been here a lot a lot a lot of years.

0067

1 IRVING: She has.

2 BLOOM: And--

3 GIFFIN: Oh, I know that. I respect that, but this
4 water issue is a very--

5 IRVING: Give me five, Nelson.

6 GIFFIN: --big issue.

7 BLOOM: But it's not Mr. Minnick's--

8 PETERS: That was good.

9 BLOOM: --water issue. I mean, he is not causing
10 this.

11 GIFFIN: But if he vacates part of the--

12 BLOOM: If we vacate that particular area he will
13 then go to D.P.S. He will then go to the Building
14 Department. The golf course, the lot to the east, I
15 can't answer for those. I mean, that is not Mr.

16 Minnick's problem unless he's getting some of this
17 water, too, and he should be complaining about it,
18 too.

19 GIFFIN: I guess I don't understand why--why we're
20 even there, then.

21 BLOOM: That's--

22 IRVING: Well, we just have, and it's very confusing
23 and--

24 BLOOM: It is.

25 IRVING: --we have a very very small portion in this

0068

1 overall picture.

2 BLOOM: Yeah, we do.

3 IRVING: And I hate to tell you this, but you're
4 giving us more credit than--than what we deserve for
5 having more control over some of the obstacles that
6 you're presenting, and that's why we have a
7 Surveyor's Office, that's why we have a department--
8 and these--these are all the correct--Jim Federoff is
9 a very excellent person that can walk you through the
10 processes that you need in order to tell you exactly
11 the different departments you need to go to and how
12 you need to do this, and maybe even go and speak at
13 your architectural control committee meeting and give
14 them--maybe what your architectural control committee
15 needs to do is to get an engineer and look at this
16 whole area and decide what mounds need to be removed.
17 We've got a situation in Chestnut where somebody put
18 a mound up that's redirecting--

19 BLOOM: All the water.

20 IRVING: --water into someone's basement every--walk-
21 out basement every single time, and they refuse to
22 move it. They are neighbors and they are in a
23 lawsuit right now. There's nothing that the
24 commissioners can do. We can't do anything about
25 this. We'll do--our part of this is just a very

0069

1 minute part of the whole area of this.

2 BLOOM: It should have never gone this far. It's--
3 it's an elementary vacation because all we're doing
4 is approving or not approving a vacation on his
5 property that has nothing to do with the other
6 properties.

7 GIFFIN: Well, all I know is I responded to a
8 certified letter to appear here.

9 BLOOM: I know, but it's the architectural committee,
10 and maybe you're right. I mean, maybe Commissioner
11 Irving is right. Maybe you should take the six, the
12 eight lots and figure out if the water has been
13 redirected or an obstruction of any kind, but I'm
14 telling you it has nothing to do with this petition.

15 GIFFIN: Wouldn't the surveyor have taken that into
16 account?

17 IRVING: Yes.

18 BLOOM: Yes. Absolutely. And he's saying that this
19 has nothing to do with the water problems. Remember
20 when he made the comment, and I know it's in the
21 minutes, that your lot has the worst elevation he's
22 ever seen?

23 GIFFIN: Uh-huh (affirmative). Yes, that's--

24 BLOOM: Yeah.

25 GIFFIN: --why I'm here.

0070

1 BLOOM: But--but that's not Mr. Minnick's fault, and
2 it's not the property to the east. Now--

3 GIFFIN: Well, I dispute what the surveyor said. I
4 don't think he took into account enough area.

5 BLOOM: Then--then--

6 GIFFIN: And I--

7 BLOOM: --we should get him out there and get all of
8 these people involved and see if--because it's coming
9 from the north, it's coming from the east.

10 GIFFIN: And it's going to the pool on Mr. Minnick's
11 property.

12 BLOOM: Yeah. And I am so sorry if you have all
13 misunderstood. I--you both have excellent
14 representation. I mean, these are two great
15 attorneys, but you're really thinking we're, like
16 Marla said, we have more authority than we do because
17 we don't. Past--past us knowing that this is okay
18 with the drainage by doing this, we're--we're out of
19 it.

20 GIFFIN: That is if the drainage was addressed
21 properly in the first place.

22 BLOOM: But to our--Department of Planning,
23 surveyor--I--there--I mean, there isn't anything else
24 I can say.

25 GIFFIN: All right.

0071

1 IRVING: Mr. Fishering, is there--

2 BLOOM: Do you have anything you want to add? Is
3 everything that we've said accurate?

4 FISHERING: As far as I'm concerned.

5 BLOOM: Okay. Is there anyone else to speak against
6 the vacation?

7 RIEBENACK: Yes. We can talk about--

8 BLOOM: Is this new information?

9 RIEBENACK: Yes, it is. We've talked about--I'm
10 sorry you seem so upset, but I don't--
11 BLOOM: No, I'm not upset.
12 RIEBENACK: --I don't--I don't think that this is
13 just a simple problem. I'm sorry. Mr. Minnick has
14 provided a pro sketch, a set of plans for his room
15 addition, and I choose to use that word knowingly.
16 I'll bet you he never showed this to the Building--
17 Planning Services Department.
18 IRVING: We--
19 RIEBENACK: This is--
20 IRVING: --that is not--
21 RIEBENACK: --his landscape.
22 IRVING: --evidence for us.
23 RIEBENACK: Okay?
24 IRVING: But see, that's not--
25 BLOOM: This isn't--

0072

1 RIEBENACK: Wait a minute. We're talking about an
2 easement here. And this landscape plan clearly shows
3 his intention to put additional impervious servants--
4 surfaces over the easement, and I'll make this part
5 of the record, but this is what it is.
6 BLOOM: This is now landscaping, not the deck?
7 RIEBENACK: This--this is landscaping, not the deck.
8 BLOOM: But--
9 RIEBENACK: And here--
10 BLOOM: --but--
11 RIEBENACK: --here is all the rock. Look. Look at
12 that. I'm sorry if I'm getting you upset, but I am
13 very upset.
14 BLOOM: Of course you're upset. The emotions are
15 flowing here.
16 RIEBENACK: They are--
17 BLOOM: Except--
18 RIEBENACK: --flowing very high.
19 BLOOM: --this is not our responsibility.
20 RIEBENACK: It's your responsibility not to vacate
21 this easement anymore than it has been because of the
22 damage it will do to the neighbors. I'm sorry about
23 the way Mrs. Giffin's lot lays. But Mr. Minnick knew
24 that lot was there and my lot was there when he
25 purchased the home. I'm sorry about that. He had

0073

1 knowledge. If he didn't do the due diligence on the
2 home, that's his tough luck. I did it. You're not
3 here to correct his problems or--
4 BLOOM: No.
5 RIEBENACK: --his mistakes--
6 BLOOM: No.
7 RIEBENACK: --or his failure--
8 BLOOM: No.
9 RIEBENACK: --to do due diligence.
10 BLOOM: No, we're not on any of the properties.
11 RIEBENACK: That's right.
12 BLOOM: We're here to do a vacation.
13 RIEBENACK: Which should not be granted.
14 BLOOM: This is a Plan Commission issue. Is there
15 anyone else to speak against the vacation? Any new
16 information? I'd like a motion to close the public
17 hearing, please.
18 PETERS: I make a motion to close the public hearing.
19 IRVING: I'll second that motion.
20 BLOOM: All in favor signify by saying "aye."
21 NELSON: Aye.
22 IRVING: Aye.
23 BLOOM: Aye.
24 IRVING: Commissioner Bloom, why did all the
25 neighbor's sign off on that?

0074

1 BLOOM: I don't know. Commissioner Irving just
2 brought something up that all the--
3 IRVING: Bill--
4 BLOOM: --signatures are on this of the neighbors?
5 RIEBENACK: Not my signature.
6 IRVING: Mrs. Giffin's is.
7 GIFFIN: I signed and rescinded mine.
8 IRVING: So, you--the hearing is closed, but--
9 FISHERING: The hearing is closed.
10 GIFFIN: The--the--
11 BLOOM: This--this is--
12 IRVING: Okay.
13 BLOOM: --the architect--this is not us.
14 IRVING: Give that to--
15 GIFFIN: Exactly.
16 IRVING: --give that to her.

17 GIFFIN: And he cannot do that without crossing my
18 property which he did not talk to me which is why I
19 rescinded my approval.

20 IRVING: Okay, we've got a motion.

21 BLOOM: No one made the motion. I--we closed--

22 IRVING: I made a motion to close the--the hearing.

23 BLOOM: Yes, and we voted on it.

24 IRVING: Okay.

25 BLOOM: All right, I'll entertain a motion.

0075

1 PETERS: I make a motion to vacate a portion of the
2 storm water and surface drainage easement on the
3 north half of lot number 21 in Sycamore Hills
4 subdivision at 10920 Birkdale Court, approximately
5 100 feet north of Birkdale Court.

6 IRVING: I'll second the motion.

7 BLOOM: All in favor signify by saying "aye."

8 NELSON: Aye.

9 IRVING: Aye.

10 BLOOM: Aye. Next thing on the agenda this morning,
11 vacation #372 to vacate a portion of unimproved
12 public right of way along the south side of lot
13 three. You know what? We're first going to take--is
14 Dr. Crawford still present? Dr. Crawford, could you
15 come forward please?

16 PETERS: You want to go out in front here real quick?

17 BLOOM: Yeah. We're going to have a presentation of
18 the check for the Brain Gain Fund. This won't take
19 but a moment.

20 IRVING: I'm sorry.

21 BLOOM: And he has waited--

22 JOHN CRAWFORD: That's okay.

23 BLOOM: --a long time.

24 JOHN CRAWFORD: That's okay.

25 BLOOM: I know you all have.

0076

1 JOHN CRAWFORD: I've got--

2 PETERS: We're just going to stand right here in
3 front of you.

4 IRVING: Yep.

5 JOHN CRAWFORD: Okay, we've got a--just a little
6 quick presentation if we could.

7 IRVING: Okay.

8 JOHN CRAWFORD: Have you got a few minutes?

9 PETERS: Yes.

10 JOHN CRAWFORD: Okay. All right.

11 PETERS: Is Ms. Grinsfelder here?

12 JOHN CRAWFORD: Yes. No. She had--I think she had
13 to go. She had a--no, here she is. I'm sorry.

14 Maureen, come on up.

15 PETERS: Absolutely.

16 JOHN CRAWFORD: All right. Just put them up wherever
17 I can see them. All right, you know we've been
18 talking about the "brain drain" problem in Allen
19 County and Fort Wayne for a long time. Go ahead to
20 the next one.

21 BLOOM: The "brain drain."

22 JOHN CRAWFORD: And we have a lot of problems with
23 Indiana college graduates fleeing our state, a lot of
24 engineering graduates particularly. Go ahead, next
25 one.

0077

1 In Allen County--about 22% of Allen County
2 residents have a college degree versus almost 25
3 [25%] of the United States, and those figures are a
4 couple of years old, and recently, the last census in
5 Indiana, we went from 19 [19%] to 21% college degrees
6 in Indiana, but the rest of the nation went from 25
7 [25%] to 28 [28%], so we didn't gain anything. And
8 unfortunately this is what really affects us. Twenty
9 [20] years ago the average pay was 103% of the U.S.
10 average, and now we've dropped to 83%. Next.

11 So we wanted to come up with a plan to try to
12 help the con--to combat that, so we've created a
13 scholarship system, and basically on these
14 engineering graduates and some other targeted ones
15 that we really need, if you come and locate in Allen
16 County and work here for a year, every year you work
17 here \$2500.00 of your college loans are paid off up
18 to \$10,000.00 over a four-year period. This is
19 administered through the Fort Wayne Education
20 Foundation, and--and we're going to start hopefully
21 awarding the first awards in October, and we've been
22 having people come in and partner with us, and we
23 really appreciate you guys doing that, and next.

24 And the goal is to become a brain magnet.

25 You see all the little happy brains now streaming
0078

1 into Northeast Indiana, and the goal is that if we
2 get them to come and stay for four years they're
3 likely to stay. I appreciate it.

4 IRVING: Dr. Crawford I was--

5 JOHN CRAWFORD: Yes.

6 IRVING: --three weeks ago I was at a--a dinner with
7 Dr. Jischke, and--from Purdue University--

8 JOHN CRAWFORD: Yes.

9 IRVING: --and I was very glad to hear that 87.5% of
10 the new graduates that have some ties to Indiana stay
11 here and work and raise their--

12 BLOOM: Really?

13 IRVING: --families, so I think we're--we're maybe on
14 an up-turn--

15 JOHN CRAWFORD: Yeah, and that's--

16 IRVING: --and that this programming will help.

17 JOHN CRAWFORD: --that's a big improvement. Purdue,
18 I think about eight or nine years ago, it was 50% of
19 the Purdue graduates were staying, and they really
20 hit it hard on graduate retention things--

21 BLOOM: Uh-huh (affirmative).

22 JOHN CRAWFORD: --and the last figures I had from a
23 couple years ago they were up to 68%, so it's even
24 getting better.

25 IRVING: Eighty-seven point five percent [87.5%].

0079

1 JOHN CRAWFORD: That's great.

2 PETERS: For those who only got to see the backside
3 of Dr. Crawford, he has been very instrumental in the
4 local Brain Gain Fund, and with him is Maureen
5 Grinsfelder who is the executive director of the Fort
6 Wayne Educational Foundation. He kind of stole a
7 little bit of the commissioners' thunder, but that's
8 okay. That's okay.

9 IRVING: That's okay. He has--

10 PETERS: Because he has--he has truly had in his
11 heart, in his mind a desire as the commissioners have
12 to ensure that we can keep our graduates local. As
13 he mentioned during the presentation, we have a great
14 success rate in graduating people throughout this
15 local area and throughout the State of Indiana, but

16 we fall way short in getting them to stay here once
17 they have graduated from college. We want that
18 commitment. Commissioner Irving, Commissioner Bloom
19 have done an outstanding luring business to town. I
20 know they work feverishly every day ensuring that we
21 can build on the successes that we've had most
22 recently. And the second thing that we're going to
23 have to do is ensure that we've got people, high-tech
24 people who can fulfill our obligation in making sure
25 that we've got employment--people to fill these jobs.

0080

1 So on behalf of Commissioner Irving, on behalf of
2 Commissioner Bloom, I'd like to present you with this
3 check of \$10,000.00 to the Fort Wayne Educational
4 Foundation from Allen County Government, and wish you
5 the best with it.

6 GRINSFELDER: Thank you very much.

7 JOHN CRAWFORD: Thank you.

8 IRVING: Thank you.

9 BLOOM: Thank you.

10 JOHN CRAWFORD: Thank you very much.

11 BLOOM: This is wonderful.

12 IRVING: Thank you for your dedication.

13 GRINSFELDER: Thank you so much.

14 IRVING: Dr. Crawford, may you not have any vacations
15 soon.

16 JOHN CRAWFORD: And here's a thing that explains the
17 whole programs. You guys can keep it.

18 PETERS: Oh, super.

19 JOHN CRAWFORD: If you have any interest--

20 IRVING: That's great.

21 JOHN CRAWFORD: --it explains everything about it.

22 BLOOM: The airport--

23 JOHN CRAWFORD: If you have a graduate--

24 BLOOM: --well, he's very medical.

25 IRVING: Can we put it--

0081

1 JOHN CRAWFORD: We try.

2 IRVING: --out here in our lobby?

3 BLOOM: I'm medical, don't you think?

4 PETERS: Thanks so much, and thanks for everything
5 you guys are doing.

6 JOHN CRAWFORD: Thank you.

7 GRINSFELDER: Thank you very much.

8 IRVING: Thanks so much.

9 JOHN CRAWFORD: I'll let you guys get back to your
10 public hearing.

11 IRVING: Okay, Commissioner Peters left for a moment.
12 Let's proceed on.

13 BLOOM: All right. I'm sorry. I didn't think that
14 would take very long. Vacation petition #372/05 to
15 vacate a portion of unimproved public right of way
16 along the south side of lot three and the west side
17 of lots three, four, five in George Collins addition.

18 We're opening this petition. Staff recommendations?

19 IRVING: I make a motion that we open the public
20 hearing.

21 BLOOM: Second. All in favor signify by saying
22 "aye."

23 IRVING: Aye.

24 BLOOM: Aye.

25 IRVING: Good morning again.

0082

1 WOOD: Good morning.

2 IRVING: We will never do two of these in the same
3 day again.

4 BLOOM: Well--

5 WOOD: I tried not to.

6 IRVING: Yeah, well--okay.

7 WOOD: Okay, Michelle Wood, Department of Planning
8 Services. This petition is to vacate a portion of an
9 unimproved public right of way along the south side
10 of lot three and along the west side of lots three,
11 four, and five in the George Collins addition for the
12 development of the adjacent parcel. Would you like
13 me to give you a brief summary?

14 BLOOM: Please.

15 WOOD: Okay, this--the adjacent parcels are--have
16 been combined, lots three, four, and five, to be
17 developed as a reception hall, Landmark Reception,
18 and this--this development did get approval from the
19 Board of Zoning Appeals as a special exception.

20 BLOOM: Okay.

21 WOOD: There was no rezoning on the property
22 necessary, and the project is currently in the
23 commercial routing process. The applicant did sign a

24 written agreement--or a written commitment with the
25 Board of Zoning Appeals for certain conditions on the
0083

1 property such as landscaping, lighting--

2 BLOOM: Uh-huh (affirmative), right.

3 WOOD: --that sort of thing that you'd normally see

4 what a--a developed plan. The petition here is to

5 vacate the right of way on the south side of this

6 property and then along the entire western portion of

7 this property which would add to this development.

8 The--the applicant does have a representative here

9 that can present more of this project to you. We--

10 staff did receive approvals from the various

11 agencies, Allen County Surveyor, Allen County

12 Highway, Verizon, Comcast, NIPSCO, and AEP, so we do

13 have those approvals stating that there are no

14 objections--excuse me, and Aqua Source--no objections

15 to this vacation. It's--it's currently unimproved.

16 There's no road built on this--in this right of way.

17 I can answer any questions.

18 IRVING: This was a unanimous decision with the BZA,

19 is that correct?

20 WOOD: I believe so. I could check to be sure.

21 IRVING: Yeah, I think it was.

22 BLOOM: Has this been properly advertised?

23 WOOD: Yes, in both Fort Wayne newspapers.

24 BLOOM: Thank you. Speaking for the vacation, is

25 anyone here to speak for the vacation? Good morning.

0084

1 BISHOP: Good morning. Good morning. Joe Bishop,

2 Bishop Engineering and Development. I'm here

3 representing the applicant, Roger and Jane Spyker. I

4 have approv--one of the applicants for this vacation.

5 The--I do want to correct one thing, if I may.

6 It's--lots one, three, and four is what the applicant

7 Roger and Jane Spyker have for the reception hall

8 that's proposed. A co-applicant to this is--

9 BLOOM: One, three, and--one, three, and four?

10 BISHOP: One, three, and four. And then lot five is

11 owned by a Mrs. Kerschner, and she also is an

12 applicant for this vacation.

13 BLOOM: Okay.

14 IRVING: Will that make any difference--excuse me one

15 minute. Michelle, does that make any difference,
16 because in your street--in the petition it is right,
17 but in the advertisement it wasn't right?
18 WOOD: No, the advertisement is for the vacation.
19 That's correct. The--I was referring to the lots
20 that the--the owner of the reception hall has, which
21 isn't part of this petition.
22 BLOOM: Okay. Okay.
23 IRVING: Okay.
24 WOOD: Okay, so I do apologize.
25 BLOOM: Thank you.

0085

1 IRVING: Go right ahead, sir.
2 BLOOM: The ordinance says three, four, and five.
3 PETERS: That--that is correct--
4 WOOD: That's correct.
5 PETERS: --based on what you just said.
6 IRVING: Right.
7 BLOOM: Okay.
8 PETERS: Okay.
9 BLOOM: Okay. Go on.
10 WOOD: Is that clear? I was--okay.
11 BISHOP: We're vacating adjacent to three, four, and
12 five. The owner of the reception hall, which I don't
13 think is--
14 PETERS: Yeah, okay.
15 BISHOP: --really relevant--
16 BLOOM: No.
17 BISHOP: --owns one, three, and four.
18 PETERS: That's what it says.
19 BLOOM: That--yeah--
20 BISHOP: Okay, I--
21 BLOOM: --it's okay.
22 BISHOP: --I'm not sure that we got the--
23 BLOOM: Now I understand it, and--yeah.
24 BISHOP: --I just wanted to make sure there wasn't a
25 confusion there that would cause problems--

0086

1 BLOOM: Okay.
2 BISHOP: --in the future. Okay, very good. I've
3 been working here with Michelle Wood on this
4 applicant, and I appreciate her effort in this. To
5 give you a little history of the area, this was

6 platted as George Collins subdivision back in 1912.

7 It was a 36-lot subdivision, and in it there have

8 been three homes built. The--about 75% of the

9 addition was vacated back in the--in the 80s, and

10 that portion of the subdivision is now the Liberty

11 Mills Apartments. The--there were--of all the roads

12 that were platted, and these were--these were platted

13 streets, of all the roads the only thing that was

14 built was a 10-foot wide gravel driveway that--

15 BLOOM: Uh-huh (affirmative). I read that in here.

16 BISHOP: --would lead back to lots three and num--and

17 lot two, and they used it in common. When the

18 Spyker's purchased lots one, three, and four they

19 have since demolished the house on lot three. The

20 proposal for the reception hall comes directly off

21 Ellison Road. It does not--it would in no way have

22 any use of the platted roadway that is there. What

23 we have--what we are requesting at this time is the--

24 just an opportunity to come clean up what platted

25 roads have never been utilized and bring them back--

0087

1 BLOOM: Uh-huh (affirmative).

2 BISHOP: --to the tax roll and some usable--make them

3 usable property. The--approx--there in 1984 this

4 commission granted a vacate of the adjacent roadway

5 to lot number two, and that 40-foot roadway was

6 vacated in its entirety to lot number two. That was

7 after the vacation of the rest of the property, as I

8 say, to the west--or the rest of the subdivision to

9 the west which is now the--Liberty Mills.

10 The--the Apartments of Liberty Mills is in

11 the process of building its final building. It's now

12 framed. It is--the property is totally utilized.

13 They've built all the way along their--their easterly

14 edge, a curb-faced walk that directs all their water

15 there, and there's a line of carports along the edge

16 of--the edge of that property. Obviously they had no

17 intention of utilizing this--this roadway or that

18 right of way also.

19 The--there will be a utility easement

20 granted, and all of the water for this new

21 development is self-contained in a detention basin

22 which is currently under review by the Allen County

23 Surveyor's Office, but there will be no water from
24 this site shedding onto any adjacent properties.

25 The--I think it's fairly simple. We can-

0088

1 what we're asking for is that the roadway to the west
2 be granted to the adjacent properties--the full
3 roadway for lots three, four, and five as was done
4 for lot two to the south.

5 BLOOM: Gotcha.

6 BISHOP: The portion of the road south of lot three
7 we are vacation, too, and that we're asking to be
8 split equally down the centerline of the right of way
9 between lots two and three. The--the gravel drive
10 south of lot one--or the roadway south of lot one
11 which is a 10-foot gravel drive as I say, we are not
12 requesting the vacation there, and the gravel drive
13 is all on the southerly portion of this property.
14 I've got it here someplace, an aerial of that which I
15 will submit.

16 IRVING: We--we have one.

17 BISHOP: You have that?

18 IRVING: Yeah, we do.

19 BISHOP: Okay, I just wanted--

20 BLOOM: Yeah, Joe, we do.

21 BISHOP: --to point out that this--that the southerly
22 edge for the--the gravel driveway that comes back to
23 the adjacent house on lot two--

24 IRVING: Uh-huh (affirmative).

25 BISHOP: --is all on the south side of that right of

0089

1 way, so there will be--

2 IRVING: Great.

3 BISHOP: --no interruption to lot number two.

4 BLOOM: Okay, good.

5 BISHOP: I--thank you very much.

6 BLOOM: Thank you.

7 IRVING: Thank you.

8 PETERS: Thank you.

9 BLOOM: Is there anyone else to speak for the
10 vacation? Anyone else to speak for the vacation?

11 Hearing none, is there anyone to speak against the
12 vacation? Anyone to speak against? Good morning.

13 DAVID CRAWFORD: Good morning. My name is David

14 Crawford. My father, Charles, owns the property on
15 lot two--

16 IRVING: Okay.

17 BLOOM: Okay.

18 DAVID CRAWFORD: --and I'm speaking on his behalf.

19 We don't have a problem with--with what they're
20 wanting to do other than the fact that this--what
21 he's saying as an unapproved driveway, the county's
22 taken care of this for years. They've plowed the
23 snow, they've graded it, they've put stone on it, and
24 my father's almost 81 years old. He's not in any
25 shape to go out and take care of this stuff, and we

0090

1 don't want to take away something away that we have.

2 I mean, like I said, he's got medical problems, he

3 needs to be able to get ambulances--

4 BLOOM: Of course.

5 DAVID CRAWFORD: --in and out, that kind of stuff,

6 and if they don't keep it plowed--I mean, it's--it--

7 being on retirement that's not something that he--

8 IRVING: Right.

9 DAVID CRAWFORD: --can afford to spend a lot of money

10 on for snow removal and stuff. That's my concern.

11 I--

12 BLOOM: You mean it's dedicated? You mean the county

13 takes of this? It's a--

14 DAVID CRAWFORD: The county--

15 BLOOM: --dedicated--

16 DAVID CRAWFORD: --the county has graded this, they

17 have plowed snow, they have put stone on it all the

18 way up past my dad's driveway. This map that--that

19 you sent out with your paperwork--

20 IRVING: Yes.

21 DAVID CRAWFORD: --only shows going--they want to

22 stop it at the edge of my dad's property. From that

23 point up they want to get this right of way back, so

24 that means that 40-foot wide from Ellison Road up the

25 first, I don't know how many feet it is exactly, but

0091

1 it comes up to where--the edge of my dad's property

2 at lot two.

3 BLOOM: Okay.

4 DAVID CRAWFORD: They want to leave that 40-foot

5 wide, and then at that point they want to split the
6 40 feet and give my dad 20 feet and them take 20.

7 BLOOM: I gotcha.

8 DAVID CRAWFORD: My dad's driveway is halfway up
9 this thing coming into his property. It doesn't come
10 in down at the end, so, you know, it's coming all the
11 way up. Like I said, I'm sorry I don't know the
12 footages, but it's at least halfway up his property.
13 It turns in off that lane into his driveway.

14 IRVING: Michelle, bring the bigger map if you could,
15 please. Let's take a look at this. Mr. Hartman from
16 the Highway Department, do you know anything about
17 this?

18 HARTMAN: I could--I could certainly bring Mr.
19 Ridenour in. (Indiscernible.)

20 IRVING: Could--could one of you come up here and
21 sit? Because the last thing the county commissioners
22 would want to do is to cause any hardship to your 81
23 year old father.

24 BLOOM: Yeah.

25 HARTMAN: Let me see if I can get Ben.

0092

1 BLOOM: Go get Ben.

2 IRVING: So where is--sir, can you show me your
3 father's property?

4 DAVID CRAWFORD: Okay, I need to get my directions
5 straight.

6 IRVING: Is that what you're talking about?

7 DAVID CRAWFORD: Yeah, this is it. This is--this is
8 my father's. I believe this is my father's property
9 right here, because this is--we've got a--I've got to
10 get my directions. I'm sorry. This doesn't make any
11 sense to me.

12 IRVING: This is our map right here, okay?

13 DAVID CRAWFORD: Okay.

14 IRVING: And that's--

15 DAVID CRAWFORD: This is--this is behind me, okay.
16 Evidently this is dad's because this would be--

17 BLOOM: Here, let them look at this.

18 DAVID CRAWFORD: --yeah, this would be a barn.

19 IRVING: Ben, because you might say a word, tell us
20 who you are.

21 RIDENOUR: Ben Ridenour, Allen County Highway

22 Department.

23 IRVING: We have a situation off of Ellison Road.

24 They're asking for a--

25 BLOOM: Vacation.

0093

1 IRVING: --vacation, and he's very concerned. The
2 Highway Department grades, puts gravel on this piece
3 and plows it. He has an 81 year old father that
4 lives there, and he wants to know if this vacation--
5 if it's a dedicated road, if this vacation is going
6 to affect his father.

7 DAVID CRAWFORD: This property--I'm not sure where
8 our lane comes in off this picture he's got because
9 it doesn't look familiar with me.

10 PETERS: Wait a minute. We're--we're upside down.
11 We've got to go this way.

12 DAVID CRAWFORD: Well, right here it says is Ellison
13 Road.

14 IRVING: Yeah, that's Ellison Road.

15 DAVID CRAWFORD: And this then is Yohne Road.

16 PETERS: You've got Ellison Road there.

17 IRVING: Well, I know, but--

18 DAVID CRAWFORD: This is--this is--

19 IRVING: --it's like this.

20 BLOOM: I know. I like them to listen to mine, too.

21 DAVID CRAWFORD: Okay, this is the apartments behind
22 my dad. My dad's house sits--

23 PETERS: He's over here, lot two?

24 DAVID CRAWFORD: Yes, this isn't--

25 PETERS: He's over here.

0094

1 DAVID CRAWFORD: --showing his stuff.

2 IRVING: Okay.

3 DAVID CRAWFORD: This is the lane coming up, okay?

4 PETERS: Uh-huh (affirmative).

5 DAVID CRAWFORD: It comes up here. Okay, that makes
6 more sense, because this is the house they tore down.

7 This is all gone. This lot--this land is all graded,
8 they've got the pond dug down here.

9 IRVING: So it doesn't show it on here? Yeah.

10 BLOOM: Yeah.

11 PETERS: Right.

12 DAVID CRAWFORD: Okay, that's why--I mean, it wasn't

13 making sense to me, the--the picture.

14 IRVING: But it shows it right here. Let's look at

15 this one. Your dad's is--

16 DAVID CRAWFORD: Right here's my dad's property.

17 IRVING: There's your dad right there.

18 DAVID CRAWFORD: Because he's got the brown roof.

19 That's his house right here. So--

20 IRVING: Okay, so this is lot two?

21 DAVID CRAWFORD: Yeah.

22 IRVING: Okay.

23 DAVID CRAWFORD: And my dad's property actually comes

24 right to this--the green line here. It comes

25 across--dad owns all this in green, you know,

0095

1 outlined in green.

2 IRVING: Okay, Ben?

3 RIDENOUR: We have maintained this for the last 25

4 years, this little road.

5 BLOOM: Lane, yeah.

6 DAVID CRAWFORD: Yeah, I mean, it's been quite some

7 time. I can't--

8 RIDENOUR: Yeah.

9 DAVID CRAWFORD: --even--I'm 55. I don't remember

10 how long. I just know it's been a long time.

11 BLOOM: Yeah.

12 RIDENOUR: I know there was some question about it.

13 DAVID CRAWFORD: Originally this lane was on the maps

14 at Cottage Lane in the county. And--because I had a

15 city map--or a county map at one time that showed it.

16 It went up--it showed that and it showed the lanes

17 going back up there, which has been done away with.

18 WOOD: I think this--

19 IRVING: Where's number two?

20 WOOD: --might help. Two is where you see the

21 manhole number eight, and it--that's on his dad's

22 property.

23 IRVING: Manhole number eight?

24 WOOD: Oh, sorry. Here. See this line?

25 IRVING: Yes.

0096

1 WOOD: Okay, that's where Mr. Crawford's property

2 starts. They're not proposing to vacate from here to

3 Ellison, from here to here, so there would be a small

4 portion until he gets to his driveway. That's who
5 that dashed line--

6 DAVID CRAWFORD: Well, it's actu--it's actually going
7 to be about half the lane when it's done. Just what
8 (indiscernible)--

9 BLOOM: We don't normally maintain lanes.

10 RIDENOUR: No, but 25 years ago this one, even when
11 Bill Jones was here, it came under discussion. He
12 said it was a maintained road.

13 PETERS: Is there any reason if this vacation were
14 granted that we wouldn't continue to do that?

15 DAVID CRAWFORD: I mean, my biggest concern is just
16 the fact that--the snow removal, because in the past
17 few years, I mean, it's--you can't get out.

18 PETERS: Uh-huh (affirmative), right.

19 DAVID CRAWFORD: And I don't want to lose that. Like
20 I said, if something happens and we, you know, we
21 need to get dad out or whatever--

22 PETERS: Well, which brings me to my question. Whose
23 responsibility, and I guess Ben, this is a probably a
24 question to you, whose responsibility would it be if
25 this vacation is granted to maintain? Does it then

0097

1 become his responsibility? Is there anything we can
2 do to continue the maintenance of that?

3 DAVID CRAWFORD: From what that things says to me--

4 BLOOM: They'll only have--

5 DAVID CRAWFORD: --it looks like only up to the--

6 BLOOM: --half of it.

7 DAVID CRAWFORD: --up to the--

8 BLOOM: Middle.

9 DAVID CRAWFORD: --property line, and from that point
10 forward I've still got, I don't know, 75 to 100 foot,
11 maybe. I'd say 75 at least on up to come up to get
12 to his driveway.

13 BISHOP: I--I have a little bit of facts that might
14 clear up some of this--

15 BLOOM: Okay.

16 BISHOP: --because I have some better plans here.

17 BLOOM: We would--we would like to hear this.

18 BISHOP: All right. The Crawford property is this
19 lot number two.

20 PETERS: Right.

21 BISHOP: And it stops at this point. We are vacating
22 up to here which is the continued--this is lot one,
23 three, and four, and this is the line of lot--this is
24 the common point of lot one and three right here, and
25 then we were going to split this. This is our
0098

1 proposal.

2 DAVID CRAWFORD: Even that, though, still doesn't
3 give me access to the property.

4 BISHOP: Well, let me--this--this shows kind of the
5 rest of the picture. I want to show you that because
6 you can see how--here again is the Crawford property.
7 their property line is currently right here.

8 IRVING: Uh-huh (affirmative).

9 BLOOM: Okay.

10 BISHOP: This is the property. Right here, this is
11 the existing drive right here. That's where it turns
12 into the Crawford's. This portion of the driveway
13 came up to the house on lot three which is now gone,
14 so what they have is--their driveway is at this
15 point.

16 PETERS: Uh-huh (affirmative).

17 BISHOP: The house sits, where, right about here?

18 DAVID CRAWFORD: It actually sits down farther than
19 that because it's back closer to the property line in
20 the back. It sets clear back here.

21 BISHOP: Back here?

22 DAVID CRAWFORD: This comes in and then turns--it
23 comes down a lane and the house sits over here. See,
24 that's--

25 BISHOP: Comes in--

0099

1 DAVID CRAWFORD: --that's our--

2 BISHOP: --like this--

3 DAVID CRAWFORD: --lane here.

4 BISHOP: --and then the house sits kind of at an
5 angle, is that correct?

6 DAVID CRAWFORD: No, the house sits straight in
7 there.

8 BISHOP: Is it straight?

9 DAVID CRAWFORD: But it's back--

10 BISHOP: But it's approximately in this location?

11 DAVID CRAWFORD: It's sets about maybe 85 feet or 80

12 or 90 feet off of this back property line that dad
13 got back.

14 BISHOP: Okay.

15 DAVID CRAWFORD: Up to the house.

16 BISHOP: Okay, but the situation is here, this
17 portion will remain the county road. Nothing's
18 changing in this portion. Currently the driveway
19 comes in--the driveway comes in here maybe even a
20 little bit deeper, and they--this is their parking
21 area here.

22 DAVID CRAWFORD: Right.

23 PETERS: Mr. Crawford, how far up have they come?

24 DAVID CRAWFORD: Yeah--

25 PETERS: How far up have they maintained?

0100

1 DAVID CRAWFORD: Yeah, they've come--

2 PETERS: Just to right here?

3 DAVID CRAWFORD: --they've come--they've come back up
4 past dad, actually, because the Zents live next to us
5 and they--

6 BISHOP: Used to come back in--

7 DAVID CRAWFORD: --they didn't go around Zents, but
8 they came all the way up to the end--

9 PETERS: Uh-huh (affirmative).

10 DAVID CRAWFORD: --which was at the back of that
11 property--

12 BISHOP: Back to here?

13 DAVID CRAWFORD: --it's probably--let them come in
14 their driveway and let us come in--

15 BISHOP: They--

16 DAVID CRAWFORD: --our driveway.

17 BISHOP: --they came up here.

18 IRVING: Okay, wait. Stop. Stop one minute. Our
19 stenographer over here says you have to stop talking
20 over each other. One person at a time. Okay.

21 BISHOP: They maintained it up to this point?

22 DAVID CRAWFORD: Yes.

23 BISHOP: Okay, what this would do is this would make
24 their maintenance, as my understand in, that it would
25 make the maintenance responsibility to the county end

0101

1 here. The Crawford family has already--has always
2 had the responsibility from this point to this point.

3 From here to the furthest point here is approximately
4 50 feet.

5 DAVID CRAWFORD: It's more--

6 BISHOP: So you--

7 DAVID CRAWFORD: --than 50 feet.

8 BISHOP: My estimate--my estimation is it's
9 approximately 50 feet.

10 PETERS: I guess my question, and Ben, maybe to you
11 then, if this goes through what changes? Do we--do
12 we stop--

13 RIDENOUR: We will still probably do this end here.
14 This is still the--county-maintained up--up to this
15 point right here, right?

16 BISHOP: This section from here to here would then
17 become the Crawford's--

18 DAVID CRAWFORD: That would be ours.

19 BISHOP: --responsibility as is the proper--as is
20 this portion, so it is merely this portion right here
21 that would--that would change.

22 PETERS: Uh-huh (affirmative). Which is 50-plus
23 feet.

24 DAVID CRAWFORD: And from that point where this
25 driveway turns in, right here set my parents'

0102

1 original house. It was 20 feet wide. From this
2 point to this point is better than 50 feet, so I'm
3 saying this driveway is somewhere in the neighborhood
4 of 70 to 80 feet from this point to here.

5 PETERS: Uh-huh (affirmative).

6 DAVID CRAWFORD: That I--that I do know.

7 BLOOM: But we wouldn't be able to get in there to do
8 that, right?

9 DAVID CRAWFORD: No, you're go--what you're going to
10 end up is you're going to stop at that property--at
11 that marker--

12 BLOOM: At the line.

13 DAVID CRAWFORD: --so they're going to--so either
14 they're going to come up there and push snow and I'm
15 not going to be able to get through it, or they're
16 going to have to back in the lane and push it out is
17 what it's saying. Because otherwise you ain't got
18 anyplace to put that snow, right?

19 RIDENOUR: I'd have to look at it after it's done,

20 but--

21 DAVID CRAWFORD: Yeah.

22 RIDENOUR: --I mean there's--but I don't see no--I
23 don't think the Highway Department would have any
24 problem with this. I really don't.

25 DAVID CRAWFORD: That was main concern. I just want
0103

1 to make sure that we aren't losing something we have.

2 BLOOM: Of course.

3 DAVID CRAWFORD: I don't have a problem with widening
4 the right of way up there, giving them the 20 feet as
5 long as we got 20, I just don't want to get to a
6 point where I'm dead-ended somewhere where I can't
7 get in.

8 BLOOM: Oh, of course not. No, of course not. Okay,
9 so if it's plowed over to here, then--

10 DAVID CRAWFORD: Yeah, if it's plowed over to here--

11 IRVING: Can we pass a vacation petition subject to
12 the confirmation of the Highway Department--

13 BLOOM: No, no.

14 IRVING: We can't do it?

15 BLOOM: No.

16 IRVING: Okay.

17 BLOOM: No.

18 IRVING: So in order--

19 BLOOM: A vacation is strictly to vacate that
20 portion.

21 IRVING: --okay, so in order to get a clarification
22 are we going to have to defer this until--

23 BLOOM: No, because we--they don't have documentation
24 to have what they have now.

25 IRVING: Right.

0104

1 BLOOM: You see what I'm saying? It's not a
2 dedicated street. There's nothing that says that the
3 county has to do this because it's not a dedicated
4 location, so it won't be legalized for us to say
5 we'll come down to here because we don't have
6 anything that says we'll come down there at all.
7 Does that make sense?

8 DAVID CRAWFORD: What you--with what you know, yes,
9 but like I said, I know that--like I said, it's
10 something that's been taken care of, so, you know--

11 BLOOM: But--but it's not on paper.
12 DAVID CRAWFORD: Okay.
13 BLOOM: So for us to say okay, we're going to extend
14 this, when there's nothing in writing for the rest of
15 it anyway, that--we can't do that. That isn't part
16 of the vacation--
17 DAVID CRAWFORD: Okay.
18 BLOOM: --the maintenance of the road.
19 DAVID CRAWFORD: Okay, I understand that--
20 BLOOM: Yeah, I know you do.
21 DAVID CRAWFORD: --I just--I--
22 BLOOM: I know you do.
23 DAVID CRAWFORD: --like you said, I just don't--
24 BLOOM: I know you do.
25 DAVID CRAWFORD: --I just don't want to lose my
0105

1 street repairs, basically, and like you said, that's
2 something--I said--
3 BLOOM: Who owns that?
4 DAVID CRAWFORD: --we've been here 55 years.
5 BLOOM: It's not a dedicated street.
6 RIDENOUR: I don't know. There's a lot of those out
7 there.
8 BLOOM: Yeah, that we maintain--
9 RIDENOUR: Uh-huh (affirmative).
10 BLOOM: --but they're not really county property.
11 You know what I'm saying? If this isn't county
12 property our maintenance person Ben Ridenour is
13 saying there's a lot of roads out there that we
14 maintain that aren't county property, but that's
15 not--we can't make any changes in the vacation.
16 IRVING: I think we might have a solution here. Sir?
17 BISHOP: I was just speaking with the owner, Mr.
18 Spyker, and this is to be built here this year.
19 Already the earth moving has--
20 BLOOM: Has started.
21 BISHOP: --has started--
22 BLOOM: Uh-huh (affirmative).
23 BISHOP: --so this will be in existence before
24 winter. He's going to be plowing all of this, and
25 Mr. Spyker has just made the offer that he would--he
0106
1 would take over the plowing of this portion--

2 BLOOM: That's great.
3 PETERS: Thank you.
4 BISHOP: --when he cleans this--
5 BLOOM: That's great. Thank you.
6 BISHOP: --when he cleans his own parking lot he can
7 send a truck there because, as I say, it's a 10-foot
8 lane. It's one pass.
9 BLOOM: Yeah.
10 IRVING: But I think that--
11 BISHOP: What I would ask is that he have the
12 permission to continue just to push the snow--
13 DAVID CRAWFORD: Right--
14 BISHOP: --up here--
15 DAVID CRAWFORD: --that's not--
16 BLOOM: Well, that--
17 DAVID CRAWFORD: --a problem.
18 BLOOM: --would be--
19 BISHOP: --pile it there.
20 IRVING: Okay.
21 DAVID CRAWFORD: No, we don't use that part of it.
22 Like I said, that was--you know, that's where they
23 used--the most we did was--
24 BLOOM: This is good.
25 DAVID CRAWFORD: --back out of the driveway.

0107

1 BLOOM: Great.
2 BISHOP: So all--so all we're doing is pushing that
3 snow to this--
4 BLOOM: Great.
5 DAVID CRAWFORD: As long as--
6 BLOOM: Terrific.
7 DAVID CRAWFORD: --as long as we have--
8 IRVING: Then you'd--
9 DAVID CRAWFORD: --plowing, I'm happy.
10 IRVING: --and agreement--
11 BLOOM: Thank you.
12 IRVING: --will be for as long as your father is
13 living there--
14 DAVID CRAWFORD: That is right.
15 IRVING: --not to be extended beyond it.
16 BLOOM: Fantastic.
17 DAVID CRAWFORD: That's fine.
18 PETERS: Thanks.

19 DAVID CRAWFORD: I mean, that--that makes me happy.
20 As long as I don't--like I said, I don't--
21 BLOOM: No, no--
22 DAVID CRAWFORD: --want to get snowed in.
23 IRVING: Of course.
24 BLOOM: We understand.
25 IRVING: Great. See, this--

0108

1 BLOOM: Thank you.
2 IRVING: --is how neighbors should work together.
3 DAVID CRAWFORD: I thank you.
4 IRVING: In a much--
5 BLOOM: Thank you.
6 IRVING: --shorter amount of time.
7 BISHOP: We were listening to the first bit.
8 BLOOM: I know you were, taking a lot of notes.
9 IRVING: How did you get the mess--
10 BISHOP: I hate to bring a petition for vacation
11 after that one.
12 IRVING: --how did you get the message and that whole
13 rest of the room didn't understand the message?
14 BLOOM: Okay.
15 IRVING: Thank you very much, Mr. Spyker.
16 BLOOM: Anyone else to speak against the vacation?
17 Good morning.
18 HALL: Good morning. My name is Jim Hall, and I'm
19 with Edward Rose and Sons or Occidental Development.
20 I'm a landscape architect, not an attorney, please.
21 IRVING: We like you.
22 HALL: Already.
23 BLOOM: A landscape architect.
24 HALL: I'm the designer of Liberty Mills Apartments--
25 BLOOM: Okay.

0109

1 HALL: --and we are on our last building and enjoying
2 very good success out there. I sent a letter, and I
3 think you might be in receipt of that letter, and
4 basically what it does is ask that we would prefer
5 status quo as it is. We think the east/west easement
6 that was just under discussion is an emergency access
7 to our property. It could be used like that at the
8 time. We did not discuss that in the site plan
9 issue, but it certainly became an option in our mind

10 that it was--that it was an emergency access. On the
11 north/south line--

12 IRVING: Sir, let me interrupt--

13 HALL: Yes.

14 IRVING: --for one second here. When was Liberty
15 Mills Apartment approved?

16 BLOOM: A couple of years ago.

17 HALL: Yeah--

18 IRVING: I was--I think I want on the Planning
19 Commission.

20 HALL: On the Planning Commission, yeah.

21 BLOOM: You were.

22 IRVING: I don't remember, and there's been--

23 HALL: Uh-huh (affirmative).

24 IRVING: --I probably went to bed one or two times
25 since this was approved--I don't remember that being

0110

1 dedicated or even discussed as an emergency route.

2 HALL: No, I--

3 IRVING: One second. Kim, our director of--executive
4 director of Department of Planning Services. Can you

5 come up here, too? Because I distinctly remember
6 this project, and that road was never considered--

7 BOWMAN: Hi, Jim.

8 BLOOM: An emergency?

9 IRVING: Right.

10 BOWMAN: I haven't seen you for a while.

11 IRVING: Kim?

12 BOWMAN: Yeah?

13 IRVING: Can you refresh my memory or is my memory
14 correct?

15 BOWMAN: Kim Bowman, Department of Planning Services.

16 You're correct, Correct Irving, that it--it was not

17 discussed as an emergency access to Liberty Mills
18 Apartments.

19 IRVING: So the Liberty Mills Apartments as approved
20 without this road stands on its own merits as far as

21 accessibility for emergency equipment, is that right
22 or wrong?

23 BOWMAN: Yes, it would be as it was approved by the
24 Plan Commission.

25 IRVING: Thank you. Go ahead now.

0111

1 HALL: We have a--a single entrance to the property.

2 There's one way and it's a boulevard entryway--

3 IRVING: Right.

4 HALL: --and typically that's what you do, so one

5 lane is blocked and the other one is not.

6 IRVING: Right.

7 HALL: And we at one time looked at putting a road in

8 the initial designs to go out to Ellison Road on

9 that. We decided not to because it was a 40-foot

10 wide right of way, but we thought that--in our minds

11 that was always an access--

12 IRVING: Uh-huh (affirmative).

13 HALL: --to that for an emergency vehicle. You can

14 get--Gators or four wheel drive vehicles or whatever

15 can get into that. On the north/south right of way

16 we would like to see it divided, and we think that

17 the uses are not quite compatible with the

18 residential uses that we have. That would give us a

19 little bit more buffer, and then if we chose we could

20 go in there and put additional planting and

21 landscaping in there if we needed to.

22 BLOOM: Wouldn't this all be done in the Planning

23 Department? Someone needs to clarify this, because

24 we--we aren't making this decision again. I mean,

25 these aren't decisions we make. All we do is vacate,

0112

1 which I hope there are not any more of for years.

2 BOWMAN: This is really a legal issue. All I can say

3 on that--I have my state law book in front--that

4 generally the title of the land that you are vacating

5 reverts to the abutting property owners when a street

6 or highway is vacated or abandoned. That--it says

7 right here in the book, generally--

8 BLOOM: Center of road?

9 BOWMAN: The center of the right of way typically

10 goes to the abutting property owners.

11 IRVING: Right.

12 BLOOM: Center line, yeah.

13 HALL: And I guess that's what our request is.

14 BLOOM: Well, that's what happens.

15 BOWMAN: I would like to add that through the Board

16 of Zoning Appeals at the reception hall, a

17 landscaping buffer plan was required, combination of

18 some fencing, landscaping. There also is a condition
19 in that approval that states that after the reception
20 hall is up and running that there is--if there is any
21 situation with the abutting property owners, which
22 would include the apartments--

23 BLOOM: Uh-huh (affirmative).

24 BOWMAN: --if there's noise or lights, that the
25 reception hall owner would address it at that time,

0113

1 so in effect we have an opportunity up front to
2 buffer, and then after the reception hall is in
3 business we can correct any situations that may arise
4 after it's operating.

5 IRVING: I--I think we're going to have to get back
6 on track with these vacations. Everything that you
7 just said has absolutely nothing--

8 BLOOM: Nothing.

9 IRVING: --to do--

10 BLOOM: Nothing.

11 IRVING: --with the petition before us. Is that
12 right or wrong, Kim?

13 BOWMAN: Yes, and in--if I could quote out of state
14 law, "A remonstrance or objection permitted by this
15 vacation procedure may be filed or raised by any
16 person aggrieved by the proposed vacation, but only
17 on one or more of the following ground rules--
18 grounds: number one, the vacation would hinder the
19 growth or orderly development of the unit or
20 neighborhood in which it is located; the vacation
21 would make access to the lands of the aggrieved
22 person by means of public waste difficult or
23 inconvenient; the vacation would hinder the public
24 access to a church, school, or other public building;
25 and number four, the vacation would hinder the use of

0114

1 a public way by the neighborhood in which it is
2 located or to which it is contiguous."

3 So what the state law is saying kind of in a
4 reverse way, as you consider these vacation
5 proceedings, you need to keep those four elements in
6 mind, that--does--will it con--restrict the current
7 movement of the neighborhood? Will it restrict the
8 movement to a church, school, or other public

9 building? Hinder the use by a--of a public way by
10 the neighborhood? You have to consider the existing
11 conditions and what is outlined in state law.

12 IRVING: Then would it not be prudent on the
13 commissioners' notification that goes out, that you
14 send out that we attach the state law with this and
15 maybe then we won't get into situations like we were
16 just in?

17 BOWMAN: That's a great idea.

18 BLOOM: It surely is.

19 IRVING: I would like to impress upon Department of
20 Planning Services that as of May 25th of 2005 any
21 vacation petition that notifications are sent that a
22 copy of the state law is attached to it.

23 BOWMAN: I would like permission to work with your
24 legal counsel.

25 IRVING: Yes.

0115

1 BOWMAN: Maybe we can put this--

2 BLOOM: Absolutely.

3 BOWMAN: --in layman terms so it's--

4 IRVING: Your legal counsel can work with our legal
5 counsel, and we'll have it under--

6 BOWMAN: Then we'll get it--

7 IRVING: Now--

8 BOWMAN: --worked out.

9 IRVING: --with those rules, what would you like to
10 add?

11 HALL: Just what I asked for.

12 IRVING: Okay, the buffering has been taken care of.
13 Those are things that can be worked with. As far as
14 the emergency entrance and stuff, that was not
15 considered when we went through, so is there anything
16 else you'd like to add?

17 HALL: Well, in a way it was considered because it
18 was existing at that time.

19 IRVING: No, it wasn't.

20 HALL: Four--four wheel drive vehicles are getting
21 back into there, and in the planning process my
22 thought process was that we had to put a road out
23 there, but we own a 45-foot--or 40-foot wide
24 easement. We did not pursue it because typically
25 they're 60 feet or 66 foot at this time.

0116

- 1 IRVING: But your project was voted on on its own
2 merits--
3 HALL: On its own merits, and--
4 IRVING: --and those were not even considered. That
5 road to my knowledge was never even brought up as a
6 consideration, because one of the things that--that I
7 did on Plan Commission--and Kim's smirking right--is
8 I always made sure that buses could maneuver around,
9 especially apartment complexes, that I felt very
10 comfortable that children would be getting on the
11 school bus and the ambulances and fire trucks could
12 maneuver properly in that area because if elderly
13 people did live there then if it was good enough for
14 them then they could also have the Meals On wheels
15 and this type--
16 BLOOM: Absolutely.
17 IRVING: --thing. So your project stood on its own
18 merits without this road.
19 HALL: And that's the reason for the boulevard
20 entryway--
21 IRVING: Right.
22 HALL: --one of the reasons--
23 IRVING: Yeah, sure.
24 HALL: --for it.
25 IRVING: Yes, sir.

0117

- 1 HALL: That's what we did.
2 IRVING: Right. And we're proud of that project.
3 HALL: Thank you.
4 IRVING: Anything else you'd like to add?
5 HALL: No.
6 BLOOM: Anyone else to speak against the vacation?
7 Anyone else? Anyone else to speak against the
8 vacation? Hearing none--
9 IRVING: I make--
10 BLOOM: --I'd like a motion to close the hearing.
11 IRVING: I make a motion to close the hearing.
12 PETERS: Second it.
13 BLOOM: All in favor signify by saying "aye."
14 NELSON: Aye.
15 IRVING: Aye.
16 BLOOM: Aye.

17 IRVING: Commissioner Bloom, I would like to make a
18 motion that we approve the vacation of #372/05.

19 PETERS: Second it.

20 BLOOM: All in favor signify by saying "aye."

21 NELSON: Aye.

22 IRVING: Aye.

23 BLOOM: Aye. Thank you. License agreements between
24 Allen County on behalf of iMap and the following
25 entities. Hi, Alex.

0118

1 WEHRNER: Good morning, Commissioners.

2 BLOOM: Yeah, I'm going to do them all at once.

3 WEHRNER: My name is Alex Wehrner. I'm director for
4 iMap, and hopefully this will be a fast decision for
5 you.

6 BLOOM: Yeah, just list the new clients, would you
7 please?

8 WEHRNER: Sure. We have A.Z.K. Tazian Associates; we
9 have IUPUI, the Center for Urban Policy and the
10 Environment; we have Earth Construction; Earth
11 Source, Inc.; Design Collaborative; Kerry Dickmeyer
12 and Associates; Beam, Longest & Neff, LLC; Gensic
13 Engineering; DLZ, Inc.; and The Sidwell Company.

14 BLOOM: Thank you.

15 IRVING: I make a motion that we approve.

16 PETERS: Second it.

17 BLOOM: All in favor signify by saying "aye."

18 NELSON: Aye.

19 IRVING: Aye.

20 BLOOM: Aye.

21 WEHRNER: Thank you, Commissioners.

22 BLOOM: Thank you, Alex. Approve and accept contract
23 completion for the Stellhorn Road bridge over Koester
24 Ditch, Project #00-024, Primco. Good morning, Bill.

25 HARTMAN: Good morning. I'm Bill Hartman sitting in

0119

1 for Mike Fitch for the Allen County Highway
2 Department.

3 IRVING: I'd like to make a motion that we approve
4 Project #00-024.

5 PETERS: I'll second it, but there--I think there
6 needs to be some clarification, and I can't seem to
7 get my hands on it now. Bill, there was a

8 provision--there was a typo in the original contract
9 that talked about the notification period before the
10 project was done. It said that residents would be
11 notified two days, and then in parentheses it said
12 five days before the project was completed, and I
13 just wanted to--yeah, I--I can show it to you. I
14 just want to make sure that's fixed as part of the
15 motion.

16 IRVING: Yeah, but I thought our attorney said that
17 wasn't any--that wouldn't be a problem.

18 PETERS: Well, but it's--I mean, it's--

19 BLOOM: Where is it?

20 IRVING: Okay, I will--okay, I will retract--

21 HARTMAN: This--

22 IRVING: --my motion--

23 HARTMAN: --this is--

24 IRVING: --and since you--

25 HARTMAN: --a different issue--

0120

1 IRVING: --have it in front of you--

2 HARTMAN: --this is a different issue. This is on
3 the 40/60 contract. This is the--

4 BLOOM: Oh, that's not this.

5 PETERS: Okay, then there's no need to retract--

6 HARTMAN: This is the--

7 IRVING: Then I won't retract my--

8 PETERS: Okay, do you have a motion?

9 BLOOM: This--it--okay, all in favor signify by
10 saying "aye."

11 NELSON: Aye.

12 IRVING: Aye.

13 BLOOM: Aye. Approve and award quotation bid project
14 for 2005 concrete package repair number one to Newell
15 Construction, \$47,581.00.

16 IRVING: So moved.

17 PETERS: Second it.

18 BLOOM: All in favor signify by saying "aye."

19 NELSON: Aye.

20 IRVING: Aye.

21 BLOOM: Aye. Approve and award bid reference #09-05,
22 bridge replacement of the Moeller Road bridge over
23 Trier Ditch to Primco, proj--oh, Bridge #182. Is
24 this in the bond?

25 HARTMAN: Yes.

0121

1 BLOOM: Okay. Total award, 460,210.68 [\$460,210.68],
2 which was considerably lower than the engineer's
3 estimate of 510,476.05 [\$510,476.05].

4 IRVING: Nelson, was that the one?

5 PETERS: Those have actually been corrected. I just
6 looked at the contracts. They've all been approved.

7 BLOOM: Okay.

8 IRVING: I make a motion we approve.

9 PETERS: I'll second it.

10 BLOOM: All in favor signify by saying "aye."

11 NELSON: Aye.

12 IRVING: Aye.

13 BLOOM: Aye. Approve 60/40 participation agreement
14 between Allen County and Oak Borough Addition for
15 street improvements. County share is 60, Oak Borough
16 40, estimated cost 101,986.45 [\$101,986.45].

17 PETERS: I make a motion on that project.

18 IRVING: Seconded.

19 BLOOM: All in favor signify by saying "aye."

20 NELSON: Aye.

21 IRVING: Aye.

22 BLOOM: Aye. Approve 60/40 participation agreement
23 between Allen County and Phase 2 Sycamore Hills
24 Addition, and this is Phase 2. We did do the first
25 phase last year. Estimated total cost 148,218.80

0122

1 [\$148,218.80].

2 IRVING: So moved.

3 PETERS: I'll second it.

4 BLOOM: All in favor signify by saying "aye."

5 NELSON: Aye.

6 IRVING: Aye.

7 BLOOM: Aye. Approve warranty deed required for
8 right of way acquisition of Leo/Mayhew Road
9 intersection, project #02-028 from Parcel 10.

10 IRVING: So moved.

11 PETERS: I'll second it.

12 BLOOM: All in favor signify by saying "aye."

13 NELSON: Aye.

14 IRVING: Aye.

15 BLOOM: Aye. Ratification of agreement with SES

16 concerning SDI.
17 IRVING: Thank you--
18 HARTMAN: I'm done.
19 IRVING: --very much, Mr. Hartman.
20 BLOOM: You're done?
21 HARTMAN: I'm done.
22 BLOOM: Anything else?
23 IRVING: Have a wonderful day.
24 HARTMAN: Thank you so much.
25 BLOOM: Thanks, Bill. Ratification of agreement with
0123

1 SES concerning SDI. Good morning.
2 MURRAY: Good afternoon.
3 BLOOM: Yeah.
4 IRVING: Boy, does time fly when you're having fun.
5 MURRAY: Always. For the record I'm Shaun Murray,
6 legislative liaison for the Allen County
7 Commissioners. I believe this proposal just needs an
8 approval for all three of you, I believe.
9 IRVING: Well, what is the proposal?
10 MURRAY: The proposal would be--excuse me--the
11 purpose of the proposal is to determine the validity
12 of information submitted by Steel Dynamics, SDI, to
13 the Indiana Department of Environment Management,
14 IDEM, in order to obtain an air permit draft from the
15 State of Indiana. So basically all they're going to
16 do is take the information already provided from both
17 sources, review it, analyze it, and publish a report
18 to us.
19 IRVING: Why would that be important?
20 MURRAY: Various numbers and reasons. They are--due
21 to the attainment initiatives that Allen County has,
22 we'd like to make sure that with the application
23 being permitted from IDEM to SDI that attainments
24 still can be achieved, and that the greater
25 production--

0124

1 BLOOM: In Allen County.
2 MURRAY: --won't, you know, infringe on any type of
3 attainment initiatives we have.
4 IRVING: I make a motion we approve the contract.
5 PETERS: I'll second it.
6 BLOOM: All in favor signify by saying "aye."

7 NELSON: Aye.

8 IRVING: Aye.

9 BLOOM: Aye. Thank you very much.

10 IRVING: I make a motion that we waive the second
11 reading of any matters that may be deemed necessary
12 for approval from today.

13 PETERS: What, you don't want a second reading on any
14 of this? I'll second it.

15 IRVING: I'm not even sure I want a first reading.

16 BLOOM: All in favor signify by saying "aye."

17 NELSON: Aye.

18 IRVING: Aye.

19 BLOOM: Aye. Are there any comments from the public
20 this morning?

21 IRVING: I would just like to make the comment,
22 number one, I think we all ought to wish Kevin
23 Leininger, which he left earlier, a happy 50th
24 birthday; and second of all--

25 BLOOM: Oh, he'll kill you.

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1 IRVING: --I know it's very very difficult when these
2 situations come up that I think anything that we can
3 do from our office, and I think this needs to be
4 addressed so people understand exactly what a
5 vacation issue is. This is the second time that
6 we've had kind of a--an explosive meeting on vacation
7 petitions, and I would love to ask Commissioner
8 Peters since he is the person on Plan Commission and
9 these are recommendations from Plan Commission, that
10 not only do we send out the state law, but if we
11 could do it in very common language, because
12 sometimes when we have the legal eagles that prepare
13 things we don't understand anymore, see if we can't
14 work on some type of a clarification so when these
15 petitions go out for vacation that the neighbors
16 understand exactly what our responsibility--

17 BLOOM: Right, right.

18 IRVING: --is and what theirs is. Because nothing
19 breaks my heart more than when we have a group of
20 neighbors--

21 BLOOM: I know.

22 IRVING: --that have put a huge investment in our
23 community, and they can't even stand to see each

24 other to go to the mailbox let alone to go out and
25 enjoy a nice, beautiful sunshiny day.

0126

1 PETERS: We will work towards those ends.
2 IRVING: Thank you, Commissioner Peters.
3 BLOOM: It is an emotional situation for the
4 commissioners plus the property owners. There just
5 is a real misunderstanding, I think, on the parts of
6 the people that receive the notices on what authority
7 the commissioners really have.
8 IRVING: In that area.
9 BLOOM: Yes.
10 IRVING: Okay, I make a motion we adjourn.
11 PETERS: Second.
12 BLOOM: All in favor signify by saying "aye."
13 NELSON: Aye.
14 IRVING: Aye.
15 BLOOM: Aye.
16 IRVING: Thank you.

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19 (Adjourned 12:08 p.m.)

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1 STATE OF INDIANA)

) SS:

2 COUNTY OF ALLEN)

3

4 REPORTER'S CERTIFICATE

5 I, M. Joshua Osbun, a Notary Public in and
6 for the State of Indiana, County of Allen, do hereby
7 certify that the above and foregoing is a true and
8 accurate transcript of the Board of Commissioners of
9 the County of Allen, Legislative Session, held before
10 me on May 25, 2005 in the Allen County Commissioners'
11 Courtroom, Room 200, City-County Building, 1 East
12 Main Street, Fort Wayne, Allen County, Indiana; that
13 I am not related to, employed by or interested in any

14 of the parties to this cause of action.

15 IN WITNESS WHEREOF, I have hereto affixed my
16 hand and seal this 1st day of June, 2005.

17

18

M. Joshua Osbun, Notary Public

19 Residing in Allen County, Indiana

20

My Commission Expires:

21 May 14, 2010