TIPPECANOE COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
September 4, 2012

The Tippecanoe County Commissioners met on Tuesday, September 4, 2012 at 10:00 a.m. in the Tippecanoe Room in the County Office Building. Commissioners present were: President Thomas P. Murtaugh, Vice President John L. Knochel, and Commissioner David S. Byers. Also present were: Attorney Dave Luhman, Auditor Jennifer Weston, Commissioner's Assistant Frank Cederquist, and Secretary Tillie Hennigar.

President Murtaugh called the meeting to order and led the Pledge of Allegiance.

APPROVAL OF MINUTES

- Commissioner Knochel moved to approve the minutes of the regular meeting held August 20, 2012, second by Commissioner Byers; motion carried.

PRESENTATION OF ACCOUNTS PAYABLE VOUCHERS

- Commissioner Knochel moved to approve the accounts payable vouchers for August 23, 24, 29, 30, 31 and September 4, 2012 as submitted without exception, second by Commissioner Byers; motion carried.

AREA PLAN COMMISSION – Sallie Fahey
Rezone Z-2505 -- Purdue Research Foundation (A to GB), **Ordinance 2012-25-CM**:
Petitioner is requesting rezoning of 9.98 acres located at the northeast corner of State Street (SR 26W) and McCormick Road (SR 526), more specifically the Purdue West Shopping Center, 1400 West State Street, Wabash 24 (NE) 23-5.

- Commissioner Knochel moved to hear Rezone Z-2505 – Purdue Research Foundation (A to GB), Ordinance 2012-25-CM, second by Commissioner Byers.

(quote)

August 16, 2012
Ref. No.: 12-244

Tippecanoe County Commissioners
20 North 6th Street
Lafayette, In 47901

CERTIFICATION

RE: **Z-2505--PURDUE RESEARCH FOUNDATION (A to GB):**

Petitioner is requesting rezoning of 9.98 acres located at the northeast corner of State Street (SR 26W) and McCormick Road (SR 526), more specifically the Purdue West shopping center, 1400 West State Street, Wabash 24 (NE) 23-5.

Dear Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on August 15, 2012 the Area Plan Commission of Tippecanoe County voted 12 yes - 0 no on the motion to rezone the subject real estate from A to GB. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Tippecanoe County Commissioners that the proposed rezoning ordinance be APPROVED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioner at their September 4, 2012 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,

Sallie Dell Fahey
Executive Director

(unquote)

Mark DeYoung, Attorney with Stuart and Branigin, 300 Main Street, Lafayette, said he is representing the Purdue Research Foundation (PRF) for the rezone. Also present is Greg Napier, the Assistant Director of Real Estate for PRF. The rezone request is for the Purdue West shopping center, located at State Road 26 West. The shopping center is bound by four public road right-of-ways and the proposal is to rezone the entire area which is currently the shopping center and a small amount of green space to the north. It has always been owned by the PRF and operated as an accessory to Purdue. The property has always been improperly zoned A for agriculture. The PRF has worked on various campus projects with the Area Plan Commission staff and the shopping center has been identified as one that can be "fixed". With approval, the rezone request would change from A to GB, fitting the current use and allow for future expansion.

President Murtaugh asked for public comments in favor of or opposed to the rezone. There were none.

Auditor Weston recorded the vote.

Byers	Aye
Knochel	Aye
Murtaugh	Aye

Ordinance 2012-25-CM passed 3-0.

Rezone Z-2499 – Southern Winds Apartments, LLS (R1 to R3), **Ordinance 2012-24-CM**:
Petitioner is requesting rezoning of 13.485 acres for a proposed eleven building apartment complex on property located at the northeast corner of US231 S and CR 350 S extending north to CR300 S in Wea 7 (NW) 22-4.

- Commissioner Knochel moved to hear Rezone Z-2499, Ordinance 2012-24-CM, second by Commissioner Byers.

(quote)

August 15, 2012
Ref. No.: 12-238

Tippecanoe County Commissioners
20 North 6th Street
Lafayette, IN 47901

CERTIFICATION

RE: **Z-2499--SOUTHERN WINDS APARTMENTS, LLC (R1 to R3):** Petitioner is requesting rezoning of 13.485 acres for a proposed eleven building apartment complex on property located at the northeast corner of US 231 S and CR 350 S extending north to CR 300 S in Wea 7 (NW) 22-4. *CONTINUED FROM THE JULY APC MEETING DUE TO AN INCONCLUSIVE VOTE.* WITH COMMITMENT.

Dear Commissioners:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on August 15, 2012 the Area Plan Commission of Tippecanoe County voted:
9 yes - 3 no to accept your Commitment and
7 yes - 5 no on the motion to rezone the subject real estate from R1 to R3, representing its second inconclusive vote on this petition.

Per APC Bylaws, a motion was subsequently made and approved to send this petition on to the Tippecanoe County Commissioners with "no recommendation."

The inconclusive votes on the rezone request were as follows:

Yes Votes	No Votes
Gary Schroeder	Jerry Reynolds
John Swick	Dave Sturgeon
Vicki Pearl	Carl Griffin
Roland Winger	Tim Shriner
Gerry Keen	Melissa Weast-Williamson
Kathy Vernon	
Tom Murtaugh	

Public Notice has been given that this petition will be heard before the Tippecanoe County Commissioners at their September 4, 2012 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,

Sallie Dell Fahey
Executive Director

(unquote)

Attorney Joe Bumbleburg with the Ball Eggleston law firm said he is representing the petitioner, Mr. Walker, who is also present. Attorney Bumbleburg introduced some special guests; his grandson and granddaughter, along with a German exchange student who is staying with his grandson. He said the rezone request is made by an established developer who has a successful and attractive complex on the east side of town. The developer has had several meetings pledging to everyone that the new complex will be run in the same manner, if approved. The area was mapped as flood plain, but during research from the surveyor it was discovered the maps needed corrected. The area is above the regulatory flood of the Wea and has been certified out of the flood plain. In doing so, the property takes on the zoning of the adjacent property which is R1. The driveway on Veterans Memorial Highway is and has always been planned as a commercial cut. The plan meets the ordinance requirement on green space and parking. The city bus will come when the demand is created. Attorney Bumbleburg has spoke with the City and sanitary sewer and water can be extended to the area. Veterans Memorial, CR 350, US 231 and the entire general area was designed to move traffic along on the south edge of the community into West Lafayette. The APC staff says it is easy access. In time, it will become a major path to West Lafayette, avoiding the need for going through downtown Lafayette. It is not residential sprawl as a sprawl is irregular growth. It is indeed a project with two major thoroughfares that reclaims land with a lesser tax base, providing tax income. The current development of Lafayette is to the east and southeast so this development will serve a different clientele. It is the right time and the right place for the project; the sewer and water can be available; the roads have been extended; the zoning is appropriate; and the tax benefit for the community is there. Across 300 N the land is zoned R1B, suggesting it could take on an urban posture. Other property in the area is a mixed bag of AW, NB, and R3. He received questions regarding the use of CR 300 and if the project would be subsidized housing. Along with the rezone request, Attorney Bumbleburg provided a COMMITMENT, approved by the APC, stating the project will not be subsidized housing and will not use CR 300. He asked the Commissioners to approve the rezoning request.

Commissioner Knochel said he was concerned about the backup of traffic from CR 350 accessing US 231. Attorney Bumbleburg said the driveway was made known to County Highway and also asked for comments. The standard comment was received from Opal Kuhl and the highway staff saying it will be looked at and if there are things needing to be retooled on the driveway, County Highway would require it be done. Commissioner Knochel asked Highway Assistant Director Mike Spencer if the Highway has been approached to add a drive on CR 300, or have intentions of doing so to which he answered no. President Murtaugh asked Attorney Luhman to provide some background on the COMMITMENT. Attorney Luhman said the rezone comes with a commitment which is binding between the petitioner and the Area Plan Commission. The APC voted 9, yes and 3, no to accept the commitment. The Commissioners may look at the COMMITMENT in connection with the consideration of the rezone but may not modify or make changes to it. Until the Commissioners have voted on the rezone, the petitioner and the APC may make modifications. Attorney Luhman read the COMMITMENT as follows:

Key Numbers: 146-04500-0046
(79-11-07-126-002.000-031)

COMMITMENT

THIS COMMITMENT made this 14th day of AUGUST, 2012 by Southern Winds Apartments, LLC (the "Petitioner"), pursuant to Indiana Code § 36-7-4-1015.

1. Petitioner makes this commitment with the consent of Steven Norfleet, the record owner (the "Owner") of certain real property (the "Real Estate") located in Lafayette, Tippecanoe County, Indiana commonly known as 631 W 300 S, Lafayette, Indiana, and more particularly described in **Exhibit A** attached to the Notarized Consent filed in connection with Petition No. Z-2499 filed with the Area Plan Commission of Tippecanoe County ("APC").

2. On June 18, 2012, Petitioner, with consent of Owner, filed a request with the APC to rezone the Real Estate from A&AW to R3 ("Petition No. Z-2499").

3. Petitioner hereby agrees and commits that any and all residential apartment units constructed and/or located upon the Real Estate shall be Market Rent units. For purposes of this Commitment, the term "Market Rent" shall mean the rent that a residential apartment, without rent or income restrictions or rent subsidies, would command in the open market considering its location, features, and amenities subject to adjustments for owner paid utilities included in the rent and discounts given to a prospective tenant to induce the tenant to sign a lease.

4. Petitioner hereby agrees and commits that it will not construct any ingress or egress on County Road 300 S.

5. Petitioner understands and agrees that this Commitment is given as a condition to the recommendation by the APC and the approval by the Board of Commissioners of Tippecanoe County of the rezoning request represented by Petition No. Z-2499. Petitioner further understands and agrees that such approval by the Board of Commissioners of Tippecanoe County constitutes good and valuable consideration for the giving of this commitment.

6. This Commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change in this Commitment shall only be made by an amendment to this Commitment with the approval of the APC at a public hearing in accordance with all APC rules and regulations.

7. Petitioner agrees that Tippecanoe County, the APC, and the Area Board of Zoning Appeals of Tippecanoe County shall each be a "specially affected person" under Indiana Code § 36-7-4-1015(d)(3) and shall each, in its sole discretion, be entitled to bring an action to enforce the terms and conditions of this Commitment in the Circuit or Superior Courts of Tippecanoe County, Indiana.

8. This Commitment shall automatically terminate upon the occurrence of any of the following: (i) a change in the zoning classification of the Real Estate, (ii) a change in the land use to which this Commitment relates, and/or (iii) otherwise in accordance with APC rules and regulations.

SOUTHERN WINDS APARTMENTS, LLC

By: _____
Brian W. Walker, Member

STATE OF INDIANA)
) SS:
TIPPECANOE COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared Southern Winds Apartments, LLC, an Indiana limited liability company, by Brian W. Walker, its Member, who acknowledged the execution of the foregoing Commitment.

Witness my hand and Notarial Seal this 14th day of August, 2012.

_____
(written)
Kelli Angstadt
(printed)
NOTARY PUBLIC
Resident of Tippecanoe County

My Commission Expires:
Sept. 17, 2016

SEAL NOTARY PUBLIC STATE OF INDIANA

This instrument prepared by: Joseph T. Bumbleburg, of the firm of BALL EGGLESTON PC, 201 Main Street, Suite 810, P.O. Box 1535, Lafayette, Indiana 47902-1535. Telephone: (765) 742-9046
I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

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President Murtaugh asked for public input in opposition of the development.

Don Partlow – 20 W 375 S, Lafayette – He stated he lives about one mile east of the proposed development. He questioned the effectiveness of the COMMITMENT as he attended the APC meeting and understood the APC has no authority to enforce the COMMITMENT. Attorney Luhman clarified it is now binding and enforceable by Tippecanoe County, the APC, and the Board of Zoning Appeal. He first asked the Commissioners to consider if there is a need for an additional 206 apartment units in

Tippecanoe County. He cited a study overview from October, 2010 of the Indiana apartment market from 2007 through 2010, indicates the Lafayette apartment occupancy was steady at 92-93%. Since 2010, there has been numerous apartment complexes built making it hard to justify additional need. His concern is how the proposed Southern Winds development will be integrated into the traffic patterns on Veterans Memorial Parkway and US 231S. The commitment has been made to not use CR 300 but he is concerned about the egress on CR 350 S. The drive is approximately 860 feet from the intersection of 231 and 350 S and he feels that is close for the traffic turning and traveling from the west. Adding 200-400 additional automobiles onto CR 350 is also a concern. Slightly west, there is a curve and the speed limit is 45 mph. Does this development fit in the neighborhood when most properties are agriculture or single family multi-acre lots? The property to the north is currently single family housing in an addition. The apartment complex is different from the type currently in the area. He believes the current zoning is correct and disagrees with Attorney Bumbleburg who stated the R1 zoning was a mistake. His next concern is if the City is prepared to handle the added people and foot traffic, specifically the 2800 block of businesses on US 231. Aside from Twyckenham Boulevard, most of the streets do not have sidewalks. Mr. Partlow provided the Commissioners with a copy of the information he presented.

President Murtaugh asked for additional public comment. There were none.

Commissioner Knochel asked Mr. Partlow where the apartments under construction are located that he referred to. Mr. Partlow said most were around the Purdue campus and east by Meijer and the hospital.

Attorney Luhman said there is one COMMITMENT including both provisions and suggested the Commissioners could vote to concur. Commissioner Knochel said there was no need to concur.

- Commissioner Byers disagreed and moved to concur with the COMMITMENT, second by President Murtaugh; motion carried.

President Murtaugh invited further discussion of the rezone request. There were none.

Auditor Weston recorded the vote:

Byers	Aye
Knochel	Aye
Murtaugh	Aye

Ordinance 2012-24-CM passed 3-0.

ACCEPTANCE OF RFP's FOR PARKING GARAGE MANAGEMENT SERVICES

Attorney Luhman said there is one submission from Denison Parking. Due to the fact that it is a Request for Proposal (RFP), the statutory requirement states it must be opened to not disclose the content to other proposers (if applicable). The proposal is for parking garage management and Attorney Luhman recommended the proposal be taken under advisement for review.

- Commissioner Knochel moved to take the RFP under review, second by Commissioner Byers; motion carried.

GRANTS – Laurie Wilson

Grant Facilitator Wilson requested permission to accept a grant for TEMA in the amount of $15,000 from the Indiana Department of Homeland Security for continuation of the ACAMS (Automated Critical Asset Management System) project.

- Commissioner Knochel moved to approve acceptance of the grant for TEMA as presented, second by Commissioner Byers; motion carried.

Grant Facilitator Wilson requested permission to accept a grant for TEMA in the amount of $18,000 from the Indiana Department of Homeland Security for District 4 Task Force GIS/technical equipment. The grant will be used in the field in case of disaster deployment.

- Commissioner Knochel moved to approve acceptance of the grant for TEMA as presented, second by Commissioner Byers; motion carried.

BUILDING COMMISSION – Ken Brown
Unsafe Structure Public Hearing: 10022 Carney Street, Colburn

Building Commissioner Brown said on the positive side, the house on Strong Avenue in Colburn was boarded up by the owner. It no longer meets the definition of unsafe. For now, it can sit until the owner gets the title situation resolved and then the owner intends to sell it to someone who will fix it up.

The other property at 10022 Carney Street in Colburn is not as positive. Attorney Masson prepared an order to comply and notice to appear at the demolition hearing. It was mailed and confirmation has been received from the four parties who received the notice. At this time, a decision should be made regarding obtaining bids for the demolition. Attorney Luhman said the hearing would be at the Commissioner meeting with the Building Commissioner presenting evidence of the condition of the building. If parties are in attendance on behalf of the owner who wants to respond, they may do so. There is no requirement to take public comment but the Commissioners may choose to do so. Building Commissioner Brown said an inspector visited the property this morning and there has been no change.

President Murtaugh asked if the owner of the property was present. Attorney Jerry Paeth said he filed a Chapter 13 bankruptcy on the property which is still ongoing. The property was surrendered during the bankruptcy and deeded to Citi Financial pursuant to court order. The records show Citi Financial as the owner. The Schnepps have no need to comment or objections to the demolition. Commissioner Brown has a letter from Citi Financial stating they have no interest in the property. Attorney Luhman said the County website indicates that a Quit Claim Deed was recorded on May 14, 2012 from the William and Lorena Schnepp to Citi Financial. Attorney Luhman said filing a Quit Claim Deed does not reflect acceptance; acceptance cannot be forced upon another and transfer of property ownership is not automatic when a debtor files a Quit Claim Deed. However, County records show that Citi Financial does have an interest in the property. The bankruptcy records show a pending Chapter 13 filed on July 28, 2008, showing the Schnepps as the debtors. Any obligation with respect to the condition of the property that arose after 2008 would be an administrative expense of the debtor in possession under the bankruptcy. It would not automatically be discharged because of the prior filed bankruptcy and would not be included in the plan of the bankruptcy. The Commissioners have what is called *in ram* jurisdiction which means they have jurisdiction to take action with respect to the condition of the property to require it to be returned to a safe condition or demolished. The remaining question is who is going to pay for it. If there is a claim for the Schnepps after the date they filed the bankruptcy, the Commissioners may file an administrative claim. The bankruptcy court may allow or dismiss that personal liability claim against the Schnepps. There may also be a claim against any record owner of the property which could include Citi Financial for reimbursement of the cost of any action the County takes to make the property safe. Those actions will occur later as the County has not incurred any expense or taken action to secure the property or demolish

it to date. To proceed, a decision can be made to determine if the property order to comply has been complied with and the property made safe. If determined it has not and the property remains in an unsafe condition, the Commissioners can order it to be secured or demolished at County expense. The Building Commissioner would then file a lien on the property for reimbursement.

As clarification, Attorney Luhman said the bankruptcy does not eliminate the record owner's obligation to keep the property in a safe condition or comply with an enforcement action brought by the County to bring it into a safe condition. Obligations arising after July, 2008 until May, 2012, when the Quit Claim Deed was filed, can be obligations of the bankruptcy estate, subject to reimbursement by the bankruptcy court.

Attorney Paeth said in July, 2010, the debtor filed a notice to the Board of Zoning Appeals surrendering the loan note and mortgage to Citi Financial. The bankruptcy court confirmed the notice without objection.

Commissioner Knochel suggested the Commissioners move forward, allowing the bankruptcy court to sort out the situation. President Murtaugh asked Building Commissioner Brown for an estimate for demolition to which he replied he estimated $5,000 to $8,000. Commissioner Byers said he understood the main concern is to get the building down and then approach who will pay the bill.

Attorney Luhman said the first thing is to have the Building Commissioner present evidence of the condition of the building and what Indiana code violations have occurred. Building Commissioner Brown said the pictures were presented at the prior meeting and there has been no change. The building has no immediate danger of collapse. The biggest issue is the availability of the public to get inside, resulting in health and possible safety issues. The criteria of an unsafe building is met if unlawful acts are going on inside. If the house were to be boarded up, it would provide a window to work with. Commissioner Byers suggested getting bids for the next meeting. Attorney Luhman said today is the formal opportunity for the Schnepps or Citi Financial to respond to the evidence.

Attorney Paeth said Citi Financial changed the locks in 2008 and hired a company for clean up. The Schnepps have not had access to the property.

Commissioner Brown said the house was boarded up at some point but plywood has been removed in a rear window allowing access to the crawl space. There has been no change since the last meeting.

Attorney Luhman stated for the record; the property is known as 10022 Carney Street, Colburn, Indiana. Those having an apparent ownership in the property are William Schnepp, Lorena Schnepp, Citi Financial Inc, and Associates Financial Services Company, Inc. Each of those persons have been provided with a notice of the hearing today. The allegations in the order to comply included that the property falls within the definition of an unsafe structure and an unsafe building defined by Indiana code 36-7-9-4. The repair of the property is not economically feasible, the property has not been demolished, has not been made secure, and has not passed inspection by the County Building Commissioner on or before the date of today's hearing. The structure is unsafe for human occupancy and should be vacated. It has an impaired structural condition. It is unsafe or likely to partially or completely collapse. It constitutes a fire hazard, a hazard to public health, an attractive nuisance or a hazard to the public. It is dangerous to people and property as a result of the code violation and the statutory building code violation. It is unfit for human habitation, it should be demolished, the debris removed, and the site returned to a safe condition. In addition, findings are the respondents have failed to comply with the prior order to make it safe or demolish it. Therefore, the prior order of August 6, 2012 to comply is confirmed and authorization is given to the Building Commissioner to demolish the structure, taking necessary steps to certify a lien. The cost of demolition and associated expenses will fall to the owners of the property.

- Commissioner Knochel moved to approve the finding as presented, second by Commissioner Byers; motion carried.

Attorney Luhman will prepare a formal order for execution by the Commissioners reflecting the action taken today. It will be appropriate for Building Commissioner Brown to secure bids.

President Murtaugh said the Public Defender agreement should be removed from the agenda.

PARK DEPARTMENT – Allen Nail
Sponsorship Agreement for Harrison College's Skate the Square

Parks and Recreation Director Nail said Al Parker, President of Harrison College contacted him three to four weeks ago in regard to the college interest in a fund raising event to benefit the Boys and Girls Club. The proposed event is Skate the Square on Sunday, September 9th from 3:00 to 8:00 pm. The required Certificate of Insurance has been acquired and street closures have been obtained by the Board of Works.

- Commissioner Knochel moved to approve the Harrison College's Skate the Square, second by Commissioner Byers; motion carried.

JAIL HV PROJECT CHANGE ORDER

President Murtaugh said the change is the final one for the project and is a deduction. The deduction is $3,003 for alternative covers, making the total budget $219, 949.

- Commissioner Knochel moved to approve the change order as presented, second by Commissioner Byers; motion carried.

FAIRGROUNDS FACILITY USE AGREEMENT WITH RED CROSS

- Commissioner Knochel moved to approve the Fairgrounds Facility Agreement with the Red Cross, second by Commissioner Byers who explained the Red Cross would use the fairground facilities in the case of a major catastrophe; motion carried.

UNFINISHED/NEW BUSINESS

President Murtaugh presented Parks and Recreation Director Allen Nail with a painting which was painted and presented to the Commissioners by the Ota students following their visit in August. Director Nail accepted and thanked the board for the painting saying it was an honor and would be hung in one of the nature center facilities.

REPORTS ON FILE

The following reports will be on file in the Commissioner's office.

Clerk of the Circuit Court
Treasurer
Park and Recreation Board
Public Library
Wabash River Corridor Commission

PUBLIC COMMENT

As there were no public comments, Commissioner Knochel moved to adjourn.

BOARD OF COMMISSIONERS OF
THE COUNTY OF TIPPECANOE

Thomas P. Murtaugh, President

John L. Knochel, Vice President

David S. Byers, Member

ATTEST:

Jennifer Weston, Auditor 09-17-2012