

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 MARCH 12, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday, March
5 12, 2009, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: Drew Kirkland, Chairman
- 9 Judy Dixon, Vice Chairman
- 10 David Appleby, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Tim Miller
- 14 Ward Pedley
- 15 Irvin Rogers
- 16 Wally Taylor
- 17 Keith Evans
- 18 Martin Hayden
- 19 Rita Moorman

20 * * * * *

21 CHAIRMAN: Mr. Chairman, I would like to
22 welcome everybody to the March 12, 2009 Owensboro
23 Metropolitan Planning Commission meeting. Will
24 everybody please rise. Our invocation will be given
25 by Mr. Dave Appleby.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

26 CHAIRMAN: Before we get into our meeting, we
27 have some guests with us tonight. Troop 76 whose
28 leader is Mr. Joe Eans. He has six scouts with him.

29 Mr. Eans, would you like to step to the podium

1 and introduce the young men that are with us tonight.

2 (MR. EANS INTRODUCES SCOUTS.)

3 CHAIRMAN: Thank you very much. Enjoy having
4 you with us.

5 Our first order of business we need to swear
6 in a new member.

7 Mr. Silvert.

8 MR. SILVERT: Thank you, Mr. Chairman.

9 Mr. Pedley, will you please stand.

10 (WARD PEDLEY SWORN IN AS PLANNING
11 COMMISSIONER.)

12 CHAIRMAN: Our next order of business is to
13 consider the minutes of the February 12th meeting.
14 Are there any additions, corrections, questions?

15 (NO RESPONSE)

16 CHAIRMAN: If not the chair is ready for a
17 motion.

18 MS. DIXON: Move to approve.

19 CHAIRMAN: Motion for approval by Ms. Dixon.

20 MS. MOORMAN: Second.

21 CHAIRMAN: Second by Ms. Moorman. All in
22 favor raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, Mr. Noffsinger.

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2

PUBLIC HEARING

3

ITEM 2

4

Consider amendments to the text to the Zoning Ordinance for Owensboro, Whitesville and Daviess County, Kentucky, regarding Article 18, Flood Plain Regulations for the City of Owensboro and Daviess County, Kentucky.

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MR. SILVERT: State your name, please.

8

MS. STONE: Becky Stone.

9

(BECKY STONE SWORN BY ATTORNEY.)

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MS. STONE: FEMA has prepared new community

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maps, new community flood insurance rate maps that

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will be adopted on April 16, 2009 of this year.

13

The changes to this ordinance are a result of

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working with the Division of Water to ensure that our

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ordinance remains in compliance with the state for

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floodplain regulations.

17

We looked at the model ordinance and most of

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the changes that occur are changes in definitions,

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additions to definitions and clarifications of the

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definition, but one of the changes that we are

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proposing is a difference to our ordinance as it

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currently exist.

23

That change is that we are proposing a

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requirement of a freeboard, which is a distance above

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the base flood elevation that a finish floor has to be

1 built. This is proposed to be one foot for new
2 residential and new non-residential construction. The
3 freeboard permits, we have looked back through
4 previous permits and this is something that's pretty
5 consistent without permitting has been done in the
6 past. Currently the ordinance requires to build to
7 the base flood elevation, but in practice the finished
8 floor elevations are being built at least a foot above
9 in most cases.

10 This will do a couple of things. It will aid
11 in our Community Rating System. It will add
12 protection to the public.

13 In addition to this one foot freeboard, we're
14 also asking that duct work that's installed in
15 buildings that are within the floodplain be
16 constructed overhead or if they're under floor, then
17 that finish floor elevation should be raised to two
18 feet above the base flood elevation or two feet above
19 adjacent grade to protect the duct work from flood
20 waters.

21 The proposal has been before the Public
22 Improvements Committee. The home builders are aware
23 of that proposal.

24 With this review we have findings that:

25 1. The proposed revisions to the ordinance

1 will ensure continued compliance with the requirements
2 of the National Flood Insurance Program;

3 2. The proposed revisions to the ordinance
4 will encourage the protection of fragile lands from
5 indiscriminate impact or loss;

6 3. The proposed revisions to the ordinance
7 will assist in the community's efforts to increase our
8 standing on the Community Rating System; and,

9 4. The proposed revisions to the ordinance
10 will further protect the public health, safety and
11 welfare of the citizens of Daviess County and the City
12 of Owensboro.

13 We're willing to answer any questions, and the
14 flood plain administrator, Jim Mischel, is here also
15 if you have technical questions about these revisions.

16 CHAIRMAN: Does anybody have any questions?

17 (NO RESPONSE)

18 CHAIRMAN: Are there any questions from the
19 commission?

20 (NO RESPONSE)

21 CHAIRMAN: If not the chair is ready for a
22 motion.

23 MR. PEDLEY: Mr. Chairman, make motion to
24 approve.

25 CHAIRMAN: Motion for approval by Mr. Pedley.

1 MR. PEDLEY: Based on the Background Staff
2 Report by Staff and the findings 1 through 4 by the
3 Staff.

4 CHAIRMAN: I'm sorry, Mr. Pedley. I got ahead
5 of you.

6 Mr. Pedley has made a motion for approval.

7 MR. APPLEBY: Second.

8 CHAIRMAN: Second by Mr. Appleby. All in
9 favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 MR. NOFFSINGER: Mr. Chairman, Item 2 will now
14 go to the city and county for final action.

15 ITEM 3

16 Consider amendments to The Comprehensive Plan for
17 Owensboro, Whitesville, Daviess County, Kentucky,
18 Section 020 Plan Content and Amendments and Section
19 460 Downtown for inclusion of the Downtown Owensboro
Place Making Initiative Master Illustrative Plan and
Report, 2009 prepared by Gateway Planning Group, Inc.

20 MS. STONE: This revision to the Comprehensive
21 Plan would include the draft or the recommended
22 downtown plan into the community's Comprehensive Plan.
23 It would make this downtown plan the vision of the
24 community for the development and revitalization of
25 downtown areas.

1 It includes the entire plan by reference and
2 it is the policy and the vision. It is not the
3 regulatory piece for the plan.

4 The Planning Commission will take action on
5 this adoption, the plan into the Comprehensive Plan
6 and this will be final action.

7 Jay from Gateway Planning is here to make a
8 short presentation regarding the overview of the plan.
9 I'll turn it over to her.

10 MR. SILVERT: State your name, please.

11 MS. NARAYANA: Jay Narayana.

12 (MS. NARAYANA SWORN BY ATTORNEY.)

13 MS. NARAYANA: Good evening, Planning
14 Commissioners. I just wanted to give a brief overview
15 of the plan. This must be information that you've
16 already seen before, but let's take a few minutes and
17 talk about it.

18 Our process has been a public/private
19 initiative so far. It's already been on a previous
20 planning efforts. This community has had several
21 downtown plans and initiatives and we are basing our
22 recommended plan on this.

23 It's market base. It's realistic. We're
24 looking at what's happening in the market place and
25 making our recommendations. It's fairly detailed. It

1 does building scale. You have the Riverpark, the
2 water front. Then we're really trying to establish in
3 the future credible regulatory environment so that we
4 can ensure that the vision in the plan is realized.

5 I won't go through this in a lot of detail,
6 but we've had a fairly broad community and over the
7 past year we had the workshop in August and we had the
8 November community meeting. This is the actual final
9 plan report.

10 This is an illustrative of the master plan.
11 Again, won't go into a lot of detail, but it is fairly
12 detailed in terms of every building and every block in
13 downtown. The focus is along the water front,
14 Veterans Boulevard, Second Street between Frederica
15 and Allen and J.R. Miller. That's really the focus of
16 the plan. There are some options for development in
17 the west downtown area which is the Executive Inn and
18 surrounding property.

19 Basically we're trying to build on the
20 existing downtown, the Riverpark Center, the \$4
21 million investment in the water front park. Trying to
22 tie all these investments and the focus being
23 development of Veterans Boulevard as a great
24 pedestrian street, as almost a plaza. Then Second
25 Street and Frederica being the other two corridors of

1 development.

2 So this is the water front today. This is the
3 vision for the water front at Veterans Boulevard.

4 So the next steps that follow immediately
5 would be Planning & Zoning Ordinance to implement some
6 of the recommendations of the plan that is established
7 design standards that will promote adjacent
8 predictability. That will attract more private
9 development.

10 With that I'd be happy to answer any
11 questions.

12 CHAIRMAN: Does anybody from the audience have
13 any questions?

14 (NO RESPONSE)

15 CHAIRMAN: Anybody from the commission?

16 (NO RESPONSE)

17 MR. NOFFSINGER: Excuse me, Mr. Chairman. It
18 will take a vote from the Planning Commission. Your
19 action is final. Meaning this document will not go to
20 the city or county governments for final approval. It
21 is a portion or a section of the Comprehensive Plan
22 that the Planning Commission statute takes action on
23 and not the city and county governments. The city and
24 county governments only take action on goals and
25 objectives in the Comprehensive Plan. However, the

1 city and county governments have endorsed this plan
2 and sent a letter to this commission asking that you
3 take action to include this plan into the adopted
4 Comprehensive Plan.

5 CHAIRMAN: If there are no further questions,
6 then the chair is ready for a motion.

7 MR. MILLER: Mr. Chairman, motion to approve
8 the amendments as presented.

9 CHAIRMAN: We have a motion for approval by
10 Mr. Miller.

11 MR. ROGERS: Second.

12 CHAIRMAN: Second by Mr. Rogers. All in favor
13 raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item, please.

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18 CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

19 ITEM 4

20 7220 Griffith Station Road
21 Consider approval of a wireless telecommunications
22 tower.
23 Applicant: William M. Medley, Sr.; Powertel Memphis,
24 Inc., d/b/a T-Mobile Kentucky

23 MR. SILVERT: State your name, please.

24 MR. HOWARD: Brian Howard.

25 (BRIAN HOWARD SWORN BY ATTORNEY.)

1 MR. HOWARD: I'll present some basic
2 information about the cellular tower application.

3 The applicant proposes to construct a 255 foot
4 lattice type cellular tower structure. It's off of
5 Griffith Station Road.

6 Due to the height at 255 feet FAA will require
7 that the tower be illuminated. It's a 250 foot tower
8 with a 5 foot lightning arrestor on top. It's a new
9 tower that's designed for two additional co-locations.
10 In the applicant's packet, the research shows that
11 there's no addition co-location opportunities within
12 the vicinity that serve their needs.

13 As far as residential structures go in the
14 vicinity, the proposed tower meets all the minimum
15 distance requirements from residential structures.
16 There are no inhabits residential structures within
17 250 feet of the proposed tower.

18 As far as the setbacks go, since it is a
19 lattice type tower, the setback requirement is half
20 the height of the tower, which in this instance would
21 be approximately 127.5 feet. The lease area is only
22 60 by 60 which means they cannot meet that
23 requirement. However, within the boundary of the
24 parent tract it would meet the setback requirements in
25 all directions except to the north, which is where it

1 would adjoin the CSX Railroad and Griffith Station.

2 With that information we would recommend that
3 that waive on setback be approved. The height, we
4 have a maximum height of 200 feet unless the Planning
5 Commission believes a higher tower is necessary.
6 They're proposing a higher tower due to the coverage
7 area. Their propagation act show that the signal with
8 a higher tower would serve a much larger area.

9 Based on that information, based on the fact
10 that this is an industrial zone site, we feel that the
11 increase in height would be appropriate.

12 The applicant submitted a screening plan that
13 shows a ten foot buffer. They're proposing a 10 foot
14 buffer with a single row of 6 foot tall pines, 6 foot
15 on center spacing. The ordinance requires that the
16 planting be staggered at a maximum of 15 feet between,
17 but looking at this we feel that it would meet that
18 requirement well.

19 No signs are proposed on the site, as I
20 mentioned earlier.

21 It's designed to co-locate two additional
22 towers.

23 I've gone over both the waivers, both the
24 setback and height and with the landscaping issue as
25 well. We feel that all of those are justified.

1 So the findings that we would use are:

2 1. Application is complete with all materials
3 in accordance with the Owensboro Metropolitan Zoning
4 Ordinance;

5 2. It's in compliance with all design
6 criteria of the Owensboro Metropolitan Zoning
7 Ordinance;

8 3. By providing the opportunity for a total
9 of three service providers on this tower, we are
10 promoting the goal of the Comprehensive Plan to
11 encourage collocation in order to minimize the number
12 of telecommunications towers.

13 We would like to enter the Staff Report into
14 the record as Exhibit A.

15 I know that the applicant's attorney is here,
16 if you have any questions for him as well.

17 CHAIRMAN: Does anybody have any questions?

18 (NO RESPONSE)

19 CHAIRMAN: If there are no questions, the
20 chair is ready for a motion.

21 MR. ROGERS: Motion for approval based on
22 Planning Staff Recommendations and Findings of Facts
23 1, 2 and 3.

24 CHAIRMAN: We have a motion for approval by
25 Mr. Rogers.

1 MR. APPLEBY: Second.

2 CHAIRMAN: Second by Mr. Appleby. All in
3 favor raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries unanimously.

6 Next item, please.

7 Related Item:

8 ITEM 4A

9 7220 Griffith Station Road
10 Consider approval of a minor subdivision plat.
11 Applicant: William M. Medley, Sr.; Powertel Memphis,
12 Inc., d/b/a T-Mobile Kentucky

12 MR. NOFFSINGER: Mr. Chairman, the plat has
13 been reviewed by the Planning Staff and Engineering
14 Staff. It's found to be in order. It comes to you as
15 an exception to the subdivision regulations in that it
16 does not meet the size requirements for a typical lot.
17 However, there is a notation on the plat that it's for
18 a utility or a cellular communication tower purposes
19 only. We would recommend that the plat be approved.

20 CHAIRMAN: Is there anybody representing the
21 applicant?

22 APPLICANT REP: Yes.

23 CHAIRMAN: Does anybody have any questions of
24 the applicant?

25 (NO RESPONSE)

1 CHAIRMAN: Anybody from the commission have
2 any questions?

3 (NO RESPONSE)

4 CHAIRMAN: If not the chair is ready for a
5 motion.

6 MR. APPLEBY: Motion for approval.

7 CHAIRMAN: Motion for approval by Mr. Appleby.

8 MR. MILLER: Second.

9 CHAIRMAN: Second by Mr. Miller. All in favor
10 raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item.

14

15 ZONING CHANGES

16 ITEM 5

17 1212 JR Miller Boulevard, 2.53 acres
18 Consider zoning change: From I-1 Light Industrial to
19 B-4 General Business
Applicant: Ron Sanders

20 MR. NOFFSINGER: Mr. Chairman, there was an
21 error in the notification of the adjoining property
22 owners on this application. Due to that and based
23 upon the state statute we would be unable to hear this
24 zoning change tonight and would recommend that you
25 postpone the item, take action to postpone until our

1 meeting in April, which will be the second Thursday,
2 April 9, 2009.

3 CHAIRMAN: Can we just 5, 5A and 5B, make a
4 motion to postpone all three of them?

5 MR. NOFFSINGER: Yes.

6 CHAIRMAN: Does anybody in the audience have a
7 question?

8 (NO RESPONSE)

9 CHAIRMAN: If not the chair is ready for a
10 motion.

11 MR. APPLEBY: Motion to postpone Items 5, 5A
12 and 5B.

13 CHAIRMAN: Motion for postponement by
14 Mr. Appleby.

15 MS. DIXON: Second.

16 CHAIRMAN: Second by Ms. Dixon. All in favor
17 raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 6

22 1708 West 7th Street, 0.18 acres
23 Consider zoning change: From I-2 Heavy Industrial to
24 R-4DT Inner-City Residential
Applicant: Jessie Carter

25 MR. HOWARD: Before I read the Staff Report,

1 I'll note that all rezonings heard tonight will be
2 final 21 days after the meeting date unless an appeal
3 form is filed. Then that would require to go to the
4 local legislative body for final approval. The appeal
5 forms are located on the table here in the back, in
6 our office and on our website.

7 PLANNING STAFF RECOMMENDATIONS

8 Staff recommends approval because the proposal
9 is a more appropriate zoning classification for the
10 subject property than its current zoning
11 classification. The findings of fact that support
12 this recommendation include the following:

13 FINDINGS OF FACT

- 14 1. The subject property is located in an
15 Industrial Plan Area, where residential uses are
16 generally not recommended;
- 17 2. The subject property has historically been
18 in use as a single-family residence;
- 19 3. The adjoining property to the south is
20 zoned R-4DT single-family residential;
- 21 4. The west side of Gracian Street from West
22 7th Street to the railroad tracks is residential in
23 use; and,
- 24 5. The current zoning classification of heavy
25 industrial is not appropriate for the subject property

1 and the proposed zoning and R-4DT Inner City
2 Residential is the more appropriate zoning
3 classification for the subject property.

4 MR. HOWARD: We would like to enter the Staff
5 Report into the record as Exhibit B.

6 CHAIRMAN: Is anybody here representing the
7 applicant?

8 APPLICANT REP: Yes.

9 CHAIRMAN: Does anybody have any questions of
10 the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: If not the chair is ready for a
13 motion.

14 MR. HAYDEN: Mr. Chairman, I make a motion for
15 approval based on Staff Recommendations and Findings
16 of Facts 1 through 5.

17 CHAIRMAN: We have a motion for approval by
18 Mr. Hayden.

19 MS. DIXON: Second.

20 CHAIRMAN: Second by Ms. Dixon. All in favor
21 raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item.

25 ITEM 7

1 Portion of 327 East 14th Street, 1200 Moseley Street,
2.400 acres
2 Consider zoning change: From I-2 Heavy Industrial to
B-5 Business/Industrial
3 Applicant: Martin & Bayley, Inc.; Thom John
Properties, LLC
4

5 PLANNING STAFF RECOMMENDATIONS

6 Staff recommends approval because the proposal
7 is in compliance with the community's adopted
8 Comprehensive Plan. The conditions and findings of
9 fact that support this recommendation include the
10 following:

11 CONDITIONS:

- 12 1. Access to East Parrish Avenue shall be
13 limited to the existing access point as shown on the
14 preliminary development plan;
- 15 2. No access shall be permitted to J.R.
16 Miller Boulevard;
- 17 3. A minor subdivision creating the proposed
18 lots shall be submitted to the OMPC;
- 19 4. Sidewalks shall be installed along all
20 street right of way; and,
- 21 5. A final development plan shall be
22 submitted prior to the issuance of building permits.

23 FINDINGS OF FACT:

- 24 1. The subject property is located within a
25 Business/Industrial Plan Area, where general business

1 and light industrial uses are appropriate in general
2 locations;

3 2. The subject property lies within an
4 existing area of mixed industrial and commercial land
5 uses;

6 3. The Comprehensive Plan provides for the
7 continuance of mixed use areas; and,

8 4. The proposed land use for the subject
9 property is in compliance with the criteria for a
10 Business/Industrial Plan Area and a B-5
11 Business/Industrial zoning classification.

12 MR. HOWARD: We would like to enter the Staff
13 Report into the record as Exhibit C.

14 I will follow up with since the Staff Report
15 was prepared the applicant has submitted a request for
16 a variance along J.R. Miller Boulevard for a road
17 buffer variance.

18 Through conversations with the applicant, city
19 engineer's office, plans have been submitted that show
20 the ability for a future roadway improvement such as a
21 right turn lane to be installed on J.R. Miller
22 Boulevard turning onto Parrish Avenue within 40 feet.
23 Currently the roadway buffer is 50 feet. So they're
24 requesting a variance to reduce roadway buffer from 50
25 to 40.

1 On the preliminary development plan that they
2 have submitted, it shows what that future right turn
3 lane could look like.

4 As part of that, what the discussion has been
5 is that they're asking for a reduction of 10 feet in
6 roadway buffer to allow their site to develop more
7 easily. As part of that, we would look for them to
8 dedicate the other 10 feet of that roadway buffer as
9 public right-of-way so it could be used by the public
10 for the roadway improvements and anything in the
11 future. That has not been addressed yet on the
12 preliminary development plan so I wanted to bring that
13 before you tonight as part of your consideration for
14 the site.

15 MR. APPLEBY: You're asking for 10 feet of the
16 40 feet roadway buffer to be dedicated to
17 right-of-way?

18 MR. HOWARD: The existing roadway buffer is
19 50. So what we would look for is if they did the
20 roadway buffer approved at 40, we would ask -- the
21 current right-of-way is approximately 30 feet. It
22 would be an increase of right-of-way of 10 feet
23 whereas they would gain 10 feet of property for
24 development by the reduction of roadway buffer.

25 CHAIRMAN: Mr. Appleby, did you understand

1 that?

2 MR. APPLEBY: Yes.

3 CHAIRMAN: Mr. Howard, wait a minute. I don't
4 think I did.

5 They've got 30. They're going to make 40. Do
6 you want them to dedicate the other 10 feet to make 50
7 or do you want them to dedicate the 30 to make 40?

8 MR. HOWARD: We would look for a total of 40.

9 CHAIRMAN: I got it now. Thank you.

10 MR. APPLEBY: That issue though will not
11 affect this zoning application, will it?

12 MR. NOFFSINGER: That is correct. Actually
13 the discussion of that item would be reserved for Item
14 7B. I don't think the following item is in order at
15 this point due to what Mr. Howard just described. You
16 can take action on Item 7 and we can have a discussion
17 on 7B.

18 MR. APPLEBY: Got you.

19 CHAIRMAN: Is there somebody representing the
20 applicant?

21 MR. WEAVER: Yes.

22 CHAIRMAN: Let's see if we have any questions
23 on Item 7.

24 Does anybody have any questions on Item 7?

25 (NO RESPONSE)

1 CHAIRMAN: If there are no questions on Item 7
2 from the chair and audience, the chair will be ready
3 for a motion on Item 7.

4 MR. APPLEBY: Mr. Chairman, I make a motion
5 for approval based on the Staff's Recommendation with
6 the five listed conditions and based on the Findings
7 of Fact 1 through 4.

8 CHAIRMAN: Mr. Appleby has made a
9 recommendation for approval.

10 MR. EVANS: Second.

11 CHAIRMAN: Second by Mr. Evans. All in favor
12 raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: The motion carries unanimously.

15 Now we have Item 7B.

16 ITEM 7B

17 303, 327 East 14th Street, 4.05 acres
18 Consider approval of preliminary development plan.
19 Applicant: Martin & Bayley, Inc.; Rexel Southland

20 MR. NOFFSINGER: Mr. Chairman, Planning Staff
21 and Engineering Staff has reviewed this development
22 plan. There is an issue regarding the roadway buffer
23 as just described by Mr. Howard.

24 I don't think at this time the applicant is
25 willing to commit to the dedication of the additional
26 10 feet of right-of-way. It was described to me that

1 they need some additional time. If that's the case, I
2 would recommend that you not take action on this plan
3 tonight. That you postpone it until such time as it
4 can be determined as to where are we going to go with
5 this roadway buffer.

6 CHAIRMAN: Let's bring the applicant to the
7 stand.

8 MR. HOWARD: State your name, please.

9 MR. WEAVER: David Weaver.

10 (DAVID WEAVER SWORN BY ATTORNEY.)

11 MR. WEAVER: We submitted a preliminary
12 development plan as a support document with rezoning
13 application.

14 Gary, correct me if I'm wrong, but I don't
15 think there's a need to postpone the preliminary
16 development plan or to approve it in that there's no
17 requirement to submit a preliminary prior to a final.
18 What I would suggest is allow Mr. Thompson to simply
19 submit a final development plan at a later date and
20 address the variance issue with roadway buffer before
21 the Board of Adjustments.

22 MR. NOFFSINGER: It was conveyed to me by
23 Staff that in your preliminary application meeting
24 that the Staff had asked for a development plan and
25 that you had determined the route you would want to go

1 is a preliminary development plan prior to the final.
2 Had you not submitted the preliminary development plan
3 for consideration tonight, Staff would not have
4 recommended the zoning change as they did. That was a
5 pre-arranged or pre-negotiated way of moving forward
6 in this process. I could be wrong, but that was what
7 was conveyed to me by the Staff.

8 MR. WEAVER: I would agree with that, Gary.
9 The preliminary development plan itself is a
10 supporting document for the rezoning application.
11 With the roadway buffer dedication of that
12 right-of-way being the only issue at this time, I
13 would suggest that we could probably just withdraw
14 that item. Let the roadway buffer issue stand on its
15 own before the Board of Adjustment. Then we'll submit
16 a final development plan at a later date after the
17 variance. Do you follow me, Gary?

18 MR. NOFFSINGER: I'm following you, David, but
19 we had a negotiated arrangement in terms of how we are
20 going to move through the process with the preliminary
21 development plan. Certainly you have the right to
22 withdraw the preliminary development plan, but in good
23 faith I would ask that you not do that because that
24 was part of the favorable recommendation on the zoning
25 change by the Staff. I'm not sure what the concern is

1 in terms of why you would want to withdraw the
2 preliminary development plan. We still have one more
3 step and that's the Board of Adjustment.

4 MR. WEAVER: That's correct. The only issue
5 that I believe the Staff has, if I'm correct, is the
6 roadway buffer issue. Whether or not the remaining
7 roadway buffer is dedicated as public right-of-way or
8 not at this time.

9 MR. NOFFSINGER: That's the only remaining
10 issue, but that's not the only issue that Staff would
11 review during the review of the preliminary
12 development plan. This is the only outstanding or
13 remaining issue.

14 MR. WEAVER: With that I guess it would be
15 appropriate for my client to speak to the roadway
16 buffer issue as far as the dedication of that as
17 right-of-way.

18 MR. THOMPSON: Al Thompson.

19 (AL THOMPSON SWORN BY ATTORNEY.)

20 MR. THOMPSON: I am a layman here so I don't
21 understand.

22 The dedication of the right-of-way for the
23 potential turn lane is a new issue. It just came up
24 to us from Planning Staff at 2:30 this afternoon. So
25 until that time we had a positive recommendation for

1 rezoning, which has already happened here, I guess,
2 without the subject condition of dedicating that
3 additional right-of-way. We got to attend a closing
4 sale of part of that lot. Construction is contingent
5 upon this rezoning tonight in getting this issue
6 resolved. So, again, until 2:30 today we thought we
7 were good to go.

8 We submitted a roadway buffer variance today.
9 My understanding is that's a separate issue, a
10 separate application, separate filing fee, a separate
11 board that considers it. I think for that 10 feet.
12 The potential allowance for future turn lane
13 constructed by others along J.R. So that's a
14 reduction from 50 to 40.

15 So, again, they'd like for us to dedicate that
16 roadway buffer as public right-of-way. That ten feet
17 is about \$25,000 at the price that we're selling that
18 corner over there. My firm, there's two partners in
19 that, and we've got an Illinois corporation buying the
20 rest of this. In two hours, I can't get yes or no on
21 can we dedicate that right-of-way or not. We may be
22 willing. We may not. I just can't say at this time.

23 Any case I feel like those two things are
24 totally separate issues and should be considered
25 separately. We appreciate your consideration of that.

1 We're not requesting postponement because we
2 need to move forward with it.

3 Again, the other thought that I have is I'm
4 not aware of any precedent for roadway buffer
5 dedication being required as part of the rezoning with
6 no compensation. My understanding was when we -- if
7 and when the potential turning lane is put in, there
8 would be possible compensation for right of way that
9 transpired there.

10 I hope you would move forward with both of
11 these items without that contingency for requiring the
12 dedication of roadway buffer right now. Thanks. Any
13 questions?

14 CHAIRMAN: Ms. Stone.

15 MS. STONE: I just would like to address the
16 requirement for the preliminary development plan and a
17 couple of other issues.

18 The Staff did require a preliminary
19 development plan to be submitted in conjunction with
20 this rezoning so that we could see the pattern of
21 development that was proposed to occur in this
22 location. A number of things are addressed with that
23 development plan including access points. You know,
24 whether or not a turn lane is needed. Now, a turn
25 lane has not been required at this location, but the

1 city has asked that that dimension be reserved for
2 that turn lane. There's a 50 roadway buffer
3 currently. The applicant can meet that roadway buffer
4 and proceed on with their development plan. They're
5 asking for a reduction in that roadway buffer and the
6 city engineer's department has reviewed their
7 preliminary plans and said that they would recommend
8 reducing it to 40 feet. As part of that process, we
9 would ask for that additional 10 feet of right-of-way
10 be dedicated, which we have done in many instances on
11 previous developments in the past. We're not asking
12 that they construct that turn lane. We're just asking
13 that they provide the right-of-way for that.

14 If we do not postpone this preliminary
15 development plan and it's withdrawn, a different
16 development plan that might require that turn lane be
17 constructed now could be submitted.

18 I think that we can move forward with the
19 rezoning as you've acted upon, postponing the
20 development plan until the variance has been acted on,
21 and then approving that preliminary development plan
22 at next month's meeting after that is resolved.

23 MR. APPLEBY: Wouldn't it be a final
24 development plan at that point? That's what the
25 zoning application is required, a final.

1 MS. STONE: They are, but we need to approve
2 this preliminary development plan because this was
3 what was turned in as the proposed development pattern
4 with this rezoning consideration.

5 MR. NOFFSINGER: Mr. Chairman, if I might add.
6 This development plan does not dedicate
7 right-of-way. It merely, this preliminary development
8 plan is of a conceptual nature which can be changed
9 pending the outcome of the meeting for the Board of
10 Adjustment.

11 Again, it does not dedicate the right-of-way.
12 Simply what we were asking was for the turn lanes to
13 be shown and the right-of-way to be shown to be
14 dedicated, but it's a future dedication. It's not a
15 dedication at this point. This is not a plat. It's a
16 development plan. Does not dedicate that plan.

17 MR. WEAVER: David Weaver again.

18 On the preliminary development plan, I believe
19 we've already spoke to the roadway buffer issue in a
20 note that's on the plan. The note reads as follows,
21 "Current roadway buffer on J.R. Miller Boulevard is 50
22 foot from center line. The applicant proposes to
23 request a reduction in said roadway buffer from 50
24 foot to 40 foot in order to make subject property more
25 developable. The applicant anticipates filing a

1 variance application to be considered at the April 9,
2 2009 Board of Adjustment meeting. The approval of the
3 this preliminary development plan does not constitute
4 approval of roadway buffer variance by the OMBA. This
5 plan will be null and void if a variance is not
6 approved."

7 MR. NOFFSINGER: Which is why we're
8 recommending the plan be postponed, if you're not
9 going to show that potential dedication and
10 improvements on that plan. That's why we're
11 recommending it be postponed until the Board of
12 Adjustment takes action. Once they take action, then
13 this development plan should be revised to show what
14 action took place.

15 MR. WEAVER: What Mr. Appleby said was
16 basically reiteration of what I was saying. That at
17 that point we could submit a final development plan,
18 but we can, if the Planning Staff would like, we could
19 submit a preliminary development plan for
20 consideration along with a final development plan.

21 MR. NOFFSINGER: Right. You could submit a
22 final development plan at the April meeting. The
23 preliminary would be first. It would come back on the
24 agenda. The preliminary is first and then the final.

25 MR. APPLEBY: He would just withdraw this one

1 at this point?

2 MR. NOFFSINGER: No. We're recommending you
3 postpone this. Then after the Board of Adjustment
4 meeting, that whatever is decided there that this
5 plan, this preliminary plan be revised to reflect the
6 outcome of that meeting, that variance.

7 MR. APPLEBY: Since you've got to do a final
8 anyway, you really wouldn't lose any time that way,
9 would you, David?

10 MR. WEAVER: That's correct. That's fine.
11 Other than the final would typically have to go before
12 this commission. That will be okay I believe, if
13 that's all right with the client.

14 (MR. WEAVER AND CLIENT CONFERS.)

15 MR. WEAVER: Sorry to bring this back up.
16 The way the agenda falls next month the Board
17 of Adjustment meeting is first followed by the
18 Planning Commission meeting; is that correct?

19 MR. APPLEBY: Yes.

20 MR. WEAVER: So the order of that would work
21 for us. Okay.

22 CHAIRMAN: Is the client requesting the
23 postponement?

24 MR. WEAVER: Give us just a second. We just
25 got this at 2:30 today.

1 CHAIRMAN: Very good.

2 MS. STONE: I wanted to clarify that they just
3 found out about this today is because we just got a
4 decision from the engineering department about whether
5 this turn lane would work within 40 feet. Prior to
6 that we were recommending that they maintain the 50
7 feet roadway buffer.

8 CHAIRMAN: Thank you, Ms. Stone. That
9 engineer would be the city engineer?

10 MS. STONE: Yes.

11 CHAIRMAN: Thank you.

12 Would you all step to the mike.

13 MR. THOMPSON: Al Thompson.

14 We are okay to postponing that. Appreciate
15 your time tonight. Thank you.

16 CHAIRMAN: Are there any further questions?

17 (NO RESPONSE)

18 CHAIRMAN: If there are no further questions,
19 the chair would be ready for a motion.

20 MS. DIXON: Move to postpone.

21 CHAIRMAN: Motion for postponement by Ms.
22 Dixon.

23 MR. EVANS: Second.

24 CHAIRMAN: Second by Mr. Evans. All in favor
25 raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: The item is postponed.

3 Next item, please.

4 -----

5 MINOR SUBDIVISIONS

6 ITEM 8

7 136, 150 Highway 1554, 12.00 acres
8 Consider approval of minor subdivision plat.
9 Applicant: Richard & Karen Strode; Strode Farmland
Enterprises

10 MR. NOFFSINGER: Mr. Chairman, Planning Staff
11 and Engineering Staff have reviewed this application.
12 The application comes before you as exception to the
13 subdivision regulations and Bryan Howard is here to
14 describe this.

15 MR. HOWARD: In the past there was a 12 acre
16 agricultural tract that was created. Basically what
17 is proposed now is that some property would be taken
18 off that 12 acre tract and consolidated with some of
19 the adjoining farm tract to create a second lot which
20 is approximately 3.2 acres, which results in both of
21 the lots exceeding the three to one ratio.

22 However, they're also consolidating a small
23 square lot to the north side of what was the 12 acre
24 tract into the larger farm. So they're actually
25 reducing or eliminating one small lot that didn't meet

1 the requirements. So the net result is we're not
2 creating any new lots. The configuration is similar
3 to what they were or to what the larger tract was
4 previously.

5 Based on the fact that they are not creating
6 any additional tract, we'd recommend that you take
7 consideration on this for approval. We have added a
8 note to the plat that states that the property as
9 platted here should not be further subdivided to
10 create additional irregular-shaped lots not meeting
11 the requirements of the subdivision regulations. So
12 we feel that will take care of any future subdivisions
13 that might be out of charter. So with that we would
14 recommend that you consider this for approval.

15 MR. APPLEBY: That note is with regards to
16 just these two lots being created?

17 MR. HOWARD: It's to the two lots, yes.

18 MR. APPLEBY: Okay.

19 CHAIRMAN: Do we have someone representing the
20 applicant here?

21 MR. STRODE: Yes.

22 CHAIRMAN: Would you like to step to the
23 podium, please.

24 MR. HOWARD: State your name, please.

25 MR. STRODE: Jason Strode.

1 (JASON STRODE SWORN BY ATTORNEY.

2 CHAIRMAN: Mr. Strode, you understood what he
3 was doing there as far as your lots?

4 MR. STRODE: Yes.

5 CHAIRMAN: And as far as the future and
6 everything?

7 MR. STRODE: Yes.

8 CHAIRMAN: Do you have any questions?

9 MR. STRODE: No.

10 CHAIRMAN: Does anybody have any further
11 questions?

12 (NO RESPONSE)

13 CHAIRMAN: Thank you for coming down.

14 If not the chair is ready for a motion.

15 MR. APPLEBY: Motion for approval.

16 CHAIRMAN: Motion for approval by Mr. Appleby.

17 MR. MILLER: Second.

18 CHAIRMAN: Second by Mr. Miller. All in favor
19 raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item.

23 -----

24 AGRICULTURAL SUBDIVISION

25 ITEM 9

1 11755, 11765 Grandview Drive
2 Consider approval of agricultural subdivision plat.
3 Applicant: Peggy McDaniel & Anita Coons

4 MR. HOWARD: This plat comes before you due to
5 the fact that there is an existing large agricultural
6 tract that was divided I believe back in 1981. It
7 shows three tracts were created at that time off of a
8 15 foot passway with no road frontage. This proposal
9 comes to you with the applicant requesting to split
10 one of those tracts into two tracts, both of which
11 would not have road frontage. So due to the fact that
12 we're creating lots or tracts that don't have road
13 frontage, Staff cannot recommend the appropriateness
14 or the approval of this plat.

15 If you have any questions, I'd be happy to
16 answer them.

17 MR. APPLEBY: What is the acreage of the
18 tracts as -- one of them doesn't show the acreage on
19 it.

20 MR. HOWARD: They're approximately 13.7 acres.

21 CHAIRMAN: Is there anybody here representing
22 the applicant?

23 (NO RESPONSE)

24 CHAIRMAN: Does anybody have any further
25 questions?

Yes, sir, Mr. Noffsinger.

1 MR. NOFFSINGER: Mr. Howard, what is the
2 intended use of the property in this division?

3 MR. HOWARD: I have not heard from the
4 applicant what their intended use is. I don't know.

5 MR. APPLEBY: They're still ag tracts though
6 because they're over ten acres, right?

7 MR. NOFFSINGER: Depends on the use, proposed
8 use. There has to be a review and determination as to
9 the use of the property before they are determined to
10 be agricultural tracts just because they're over ten
11 acres.

12 MR. APPLEBY: But they're submitting it though
13 as an ag subdivision.

14 MR. NOFFSINGER: That is the way they
15 submitted it. When I reviewed, I did not sign the
16 plat due to the configuration, no road frontage, and
17 not having the intended use of the property.

18 CHAIRMAN: Mr. Appleby, would you need some
19 more information on that before you could -- I mean
20 the Staff is recommending denial because of no access
21 to the road.

22 MR. APPLEBY: Why don't we postpone it and see
23 if we can get the people to come tell us what they
24 want to do with it rather than just deny it.

25 CHAIRMAN: Is that a motion, Mr. Appleby?

1 MR. APPLEBY: I move to postpone it.

2 CHAIRMAN: Mr. Appleby has a motion for
3 postponement.

4 MR. ROGERS: Second.

5 CHAIRMAN: We've got a second by Mr. Rogers.
6 All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 -----

10 NEW BUSINESS

11 ITEM 10

12 Consider approval of the Public Improvement
13 Specifications surety unit cost annual revision.

14 MR. NOFFSINGER: Mr. Chairman, we do this
15 every year. It's an annual revision. These items
16 have been reviewed by the Public Improvement
17 Specifications Review Committee which consist of the
18 city and county engineer, the Planning Staff,
19 engineers of a private sector, developers, earth
20 movers, and many of the developers within the
21 community. These items have been revised in certain
22 circumstances to reflect new amounts. We would
23 recommend that you approve these new surety unit cost.

24 CHAIRMAN: Does anybody from the audience have
25 any questions?

1 (NO RESPONSE)

2 CHAIRMAN: Does anybody on the Staff have any
3 questions?

4 (NO RESPONSE)

5 CHAIRMAN: Anybody from the commission?

6 (NO RESPONSE)

7 CHAIRMAN: If not the chair is ready for a
8 motion.

9 MS. DIXON: Move to approve.

10 CHAIRMAN: Motion for approval by Ms. Dixon.

11 MS. MOORMAN: Second.

12 CHAIRMAN: Second by Ms. Moorman. All in
13 favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: The motion carries unanimously.

16 MR. SILVERT: Mr. Chairman, if I may. I just
17 need a moment for an announcement.

18 CHAIRMAN: I'm sure it will be a very short
19 announcement.

20 MR. SILVERT: I'll do the best I can.

21 I received some time ago a letter from the
22 property section of the Kentucky Bar Association.
23 That letter has been copied to me by several attorneys
24 from around the state and locally. It addresses the
25 question of non-attorneys representing clients during

1 quasi judicial proceedings such as our own, typically
2 realtors and engineers. We got kind of dangerously
3 close to that tonight. The bar association has
4 recommended that for counsel for the local planning
5 commissions admonish those who were doing that to not
6 because it is practicing law without a license. In
7 fact, admonish those of us who were working with
8 planning commissions that if we did not do that that
9 we would also be as culpitable as they are.

10 I wanted to make sure that everyone needed to
11 know that obviously you can always represent yourself
12 on a pro se basis, but if you do feel like you need
13 someone to present your case, that to do that you need
14 to have a licensed attorney.

15 MR. APPLEBY: And this came from where?

16 MR. SILVERT: The Kentucky Bar Association.

17 CHAIRMAN: But as you pointed out, Mr.
18 Silvert, we may have come close, but we did not cross
19 the line.

20 MR. APPLEBY: Is that Kentucky statute that
21 requires that or this is just --

22 MR. SILVERT: Yes. It would be a situation
23 where to practice law you have to have a license to do
24 so. It's their opinion, their ethical opinion that
25 that's practicing law without a license.

1 At any rate the Chair is welcome to hear that
2 testimony, certainly it's the Chair's courtesy, but I
3 was admonished to make that announcement.

4 CHAIRMAN: Since you're our legal counsel
5 you'd be the most qualified to make that
6 determination. You said tonight we did not cross over
7 that line; is that correct?

8 MR. SILVERT: I would have to leave whether or
9 not that testimony is taken to the Chair's discretion.

10 CHAIRMAN: We heard the testimony. I think
11 they represented themselves as an engineer.

12 At this point in time the Chair would be ready
13 for one final motion.

14 MS. DIXON: Move to adjourn.

15 CHAIRMAN: Motion for adjournment by Ms.
16 Dixon.

17 MR. EVANS: Second.

18 CHAIRMAN: Second by Mr. Evans. All in favor
19 raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: We are adjourned.

22 -----

23

24

25

1 STATE OF KENTUCKY)
)SS: REPORTER'S CERTIFICATE
2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Planning
6 Commission meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 42 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 23rd day of March, 2009.

18

19

20 _____
LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
21 202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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