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

MEMBERS PRESENT: Drew Kirkland, Chairman Judy Dixon, Vice Chairman David Appleby, Secretary Gary Noffsinger, Director Madison Silvert, Attorney Tim Miller Ward Pedley Irvin Rogers Wally Taylor Keith Evans Martin Hayden Rita Moorman

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

Mr. Eans, would you like to step to the podium
and introduce the young men that are with us tonight.

(MR. EANS INTRODUCES SCOUTS.)

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

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

Mr. Silvert.

MR. SILVERT: Thank you, Mr. Chairman.

Mr. Pedley, will you please stand.

(WARD PEDLEY SWORN IN AS PLANNING COMMISSIONER.)

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

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MS. MOORMAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.
ITEM 2

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.

MR. SILVERT: State your name, please.

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: FEMA has prepared new community maps, new community flood insurance rate maps that will be adopted on April 16, 2009 of this year.

The changes to this ordinance are a result of working with the Division of Water to ensure that our ordinance remains in compliance with the state for floodplain regulations.

We looked at the model ordinance and most of the changes that occur are changes in definitions, additions to definitions and clarifications of the definition, but one of the changes that we are proposing is a difference to our ordinance as it currently exist.

That change is that we are proposing a requirement of a freeboard, which is a distance above the base flood elevation that a finish floor has to be
built. This is proposed to be one foot for new
residential and new non-residential construction. The
freeboard permits, we have looked back through
previous permits and this is something that's pretty
consistent without permitting has been done in the
past. Currently the ordinance requires to build to
the base flood elevation, but in practice the finished
floor elevations are being built at least a foot above
in most cases.

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

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

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

With this review we have findings that:

1. The proposed revisions to the ordinance
will ensure continued compliance with the requirements of the National Flood Insurance Program;

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

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

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

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

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

CHAIRMAN: Are there any questions from the commission?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for approval by Mr. Pedley.
MR. PEDLEY: Based on the Background Staff Report by Staff and the findings 1 through 4 by the Staff.

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

Mr. Pedley has made a motion for approval.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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

ITEM 3

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

MS. STONE: This revision to the Comprehensive Plan would include the draft or the recommended downtown plan into the community's Comprehensive Plan. It would make this downtown plan the vision of the community for the development and revitalization of downtown areas.
It includes the entire plan by reference and it is the policy and the vision. It is not the regulatory piece for the plan.

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

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

MR. SILVERT: State your name, please.

MS. NARAYANA: Jay Narayana.

(MS. NARAYANA SWORN BY ATTORNEY.)

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

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

It's market base. It's realistic. We're looking at what's happening in the market place and making our recommendations. It's fairly detailed. It
does building scale. You have the Riverpark, the
water front. Then we're really trying to establish in
the future credible regulatory environment so that we
can ensure that the vision in the plan is realized.

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

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

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

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

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

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

CHAIRMAN: Does anybody from the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission?

(NO RESPONSE)

MR. NOFFSINGER: Excuse me, Mr. Chairman. It will take a vote from the Planning Commission. Your action is final. Meaning this document will not go to the city or county governments for final approval. It is a portion or a section of the Comprehensive Plan that the Planning Commission statute takes action on and not the city and county governments. The city and county governments only take action on goals and objectives in the Comprehensive Plan. However, the
city and county governments have endorsed this plan and sent a letter to this commission asking that you take action to include this plan into the adopted Comprehensive Plan.

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

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

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

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

ITEM 4

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

MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(BRIAN HOWARD SWORN BY ATTORNEY.)
MR. HOWARD: I'll present some basic information about the cellular tower application.

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

Due to the height at 255 feet FAA will require that the tower be illuminated. It's a 250 foot tower with a 5 foot lightning arrestor on top. It's a new tower that's designed for two additional co-locations.

In the applicant's packet, the research shows that there's no addition co-location opportunities within the vicinity that serve their needs.

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

As far as the setbacks go, since it is a lattice type tower, the setback requirement is half the height of the tower, which in this instance would be approximately 127.5 feet. The lease area is only 60 by 60 which means they cannot meet that requirement. However, within the boundary of the parent tract it would meet the setback requirements in all directions except to the north, which is where it
would adjoin the CSX Railroad and Griffith Station.

With that information we would recommend that
that waive on setback be approved. The height, we
have a maximum height of 200 feet unless the Planning
Commission believes a higher tower is necessary.

They're proposing a higher tower due to the coverage
area. Their propagation act show that the signal with
a higher tower would serve a much larger area.

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

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

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

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

I've gone over both the waivers, both the
setback and height and with the landscaping issue as
well. We feel that all of those are justified.
So the findings that we would use are:

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

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

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

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

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

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

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

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

CHAIRMAN: We have a motion for approval by Mr. Rogers.
MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

Related Item:

ITEM 4A

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

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

CHAIRMAN: Is there anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)
CHAIRMAN: Anybody from the commission have any questions?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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ZONING CHANGES

ITEM 5

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

MR. NOFFSINGER: Mr. Chairman, there was an error in the notification of the adjoining property owners on this application. Due to that and based upon the state statute we would be unable to hear this zoning change tonight and would recommend that you postpone the item, take action to postpone until our
meeting in April, which will be the second Thursday, April 9, 2009.

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

MR. NOFFSINGER: Yes.

CHAIRMAN: Does anybody in the audience have a question?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for postponement by Mr. Appleby.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

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

MR. HOWARD: Before I read the Staff Report,
I'll note that all rezonings heard tonight will be final 21 days after the meeting date unless an appeal form is filed. Then that would require to go to the local legislative body for final approval. The appeal forms are located on the table here in the back, in our office and on our website.

PLANNING STAFF RECOMMENDATIONS

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

FINDINGS OF FACT

1. The subject property is located in an Industrial Plan Area, where residential uses are generally not recommended;

2. The subject property has historically been in use as a single-family residence;

3. The adjoining property to the south is zoned R-4DT single-family residential;

4. The west side of Gracian Street from West 7th Street to the railroad tracks is residential in use; and,

5. The current zoning classification of heavy industrial is not appropriate for the subject property
and the proposed zoning and R-4DT Inner City Residential is the more appropriate zoning classification for the subject property.

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

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

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

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 7
Portion of 327 East 14th Street, 1200 Moseley Street, 2.400 acres
Consider zoning change: From I-2 Heavy Industrial to B-5 Business/Industrial
Applicant: Martin & Bayley, Inc.; Thom John Properties, LLC

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:

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

FINDINGS OF FACT:

1. The subject property is located within a Business/Industrial Plan Area, where general business
and light industrial uses are appropriate in general
locations;

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

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

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

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

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

Through conversations with the applicant, city
engineer's office, plans have been submitted that show
the ability for a future roadway improvement such as a
right turn lane to be installed on J.R. Miller
Boulevard turning onto Parrish Avenue within 40 feet.
Currently the roadway buffer is 50 feet. So they're
requesting a variance to reduce roadway buffer from 50
to 40.
On the preliminary development plan that they have submitted, it shows what that future right turn lane could look like.

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

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

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

CHAIRMAN: Mr. Appleby, did you understand
MR. APPLEBY: Yes.

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

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

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

CHAIRMAN: I got it now. Thank you.

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

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

MR. APPLEBY: Got you.

CHAIRMAN: Is there somebody representing the applicant?

MR. WEAVER: Yes.

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

Does anybody have any questions on Item 7?

(NO RESPONSE)
CHAIRMAN: If there are no questions on Item 7 from the chair and audience, the chair will be ready for a motion on Item 7.

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

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

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously. Now we have Item 7B.

ITEM 7B

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

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

I don't think at this time the applicant is willing to commit to the dedication of the additional 10 feet of right-of-way. It was described to me that
they need some additional time. If that's the case, I
would recommend that you not take action on this plan
tonight. That you postpone it until such time as it
can be determined as to where are we going to go with
this roadway buffer.

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

MR. HOWARD: State your name, please.

MR. WEAVER: David Weaver.

(DAVID WEAVER SWORN BY ATTORNEY.)

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

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

MR. NOFFSINGER: It was conveyed to me by
Staff that in your preliminary application meeting
that the Staff had asked for a development plan and
that you had determined the route you would want to go
is a preliminary development plan prior to the final. Had you not submitted the preliminary development plan for consideration tonight, Staff would not have recommended the zoning change as they did. That was a pre-arranged or pre-negotiated way of moving forward in this process. I could be wrong, but that was what was conveyed to me by the Staff.

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

MR. NOFFSINGER: I'm following you, David, but we had a negotiated arrangement in terms of how we are going to move through the process with the preliminary development plan. Certainly you have the right to withdraw the preliminary development plan, but in good faith I would ask that you not do that because that was part of the favorable recommendation on the zoning change by the Staff. I'm not sure what the concern is
in terms of why you would want to withdraw the
preliminary development plan. We still have one more
step and that's the Board of Adjustment.

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

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

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

MR. THOMPSON: Al Thompson.

(AL THOMPSON SWORN BY ATTORNEY.)

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

The dedication of the right-of-way for the
potential turn lane is a new issue. It just came up
to us from Planning Staff at 2:30 this afternoon. So
until that time we had a positive recommendation for
rezoning, which has already happened here, I guess, without the subject condition of dedicating that additional right-of-way. We got to attend a closing sale of part of that lot. Construction is contingent upon this rezoning tonight in getting this issue resolved. So, again, until 2:30 today we thought we were good to go.

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

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

Any case I feel like those two things are totally separate issues and should be considered separately. We appreciate your consideration of that.
We're not requesting postponement because we need to move forward with it.

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

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

CHAIRMAN: Ms. Stone.

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

The Staff did require a preliminary development plan to be submitted in conjunction with this rezoning so that we could see the pattern of development that was proposed to occur in this location. A number of things are addressed with that development plan including access points. You know, whether or not a turn lane is needed. Now, a turn lane has not been required at this location, but the
city has asked that that dimension be reserved for
that turn lane. There's a 50 roadway buffer
currently. The applicant can meet that roadway buffer
and proceed on with their development plan. They're
asking for a reduction in that roadway buffer and the
city engineer's department has reviewed their
preliminary plans and said that they would recommend
reducing it to 40 feet. As part of that process, we
would ask for that additional 10 feet of right-of-way
be dedicated, which we have done in many instances on
previous developments in the past. We're not asking
that they construct that turn lane. We're just asking
that they provide the right-of-way for that.

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

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

MR. APPLEBY: Wouldn't it be a final
development plan at that point? That's what the
zoning application is required, a final.
MS. STONE: They are, but we need to approve this preliminary development plan because this was what was turned in as the proposed development pattern with this rezoning consideration.

MR. NOFFSINGER: Mr. Chairman, if I might add.

This development plan does not dedicate right-of-way. It merely, this preliminary development plan is of a conceptual nature which can be changed pending the outcome of the meeting for the Board of Adjustment.

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

MR. WEAVER: David Weaver again.

On the preliminary development plan, I believe we've already spoke to the roadway buffer issue in a note that's on the plan. The note reads as follows, "Current roadway buffer on J.R. Miller Boulevard is 50 foot from center line. The applicant proposes to request a reduction in said roadway buffer from 50 foot to 40 foot in order to make subject property more developable. The applicant anticipates filing a
variance application to be considered at the April 9, 2009 Board of Adjustment meeting. The approval of this preliminary development plan does not constitute approval of roadway buffer variance by the OMBA. This plan will be null and void if a variance is not approved."

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

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

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

MR. APPLEBY: He would just withdraw this one
MR. NOFFSINGER: No. We're recommending you postpone this. Then after the Board of Adjustment meeting, that whatever is decided there that this plan, this preliminary plan be revised to reflect the outcome of that meeting, that variance.

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

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

(MR. WEAVER AND CLIENT CONFERS.)

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

MR. APPLEBY: Yes.

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

CHAIRMAN: Is the client requesting the postponement?

MR. WEAVER: Give us just a second. We just got this at 2:30 today.
CHAIRMAN: Very good.

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

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

MS. STONE: Yes.

CHAIRMAN: Thank you.

Would you all step to the mike.

MR. THOMPSON: Al Thompson.

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

CHAIRMAN: Are there any further questions?

(NO RESPONSE)

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

MS. DIXON: Move to postpone.

CHAIRMAN: Motion for postponement by Ms. Dixon.

MR. EVANS: Second.

CHAIRMAN: Second by Mr. Evans. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The item is postponed.

Next item, please.

MINOR SUBDIVISIONS

ITEM 8

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

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

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

However, they're also consolidating a small square lot to the north side of what was the 12 acre tract into the larger farm. So they're actually reducing or eliminating one small lot that didn't meet
the requirements. So the net result is we're not
creating any new lots. The configuration is similar
to what they were or to what the larger tract was
previously.

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

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

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

MR. APPLEBY: Okay.

CHAIRMAN: Do we have someone representing the
applicant here?

MR. STRODE: Yes.

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

MR. HOWARD: State your name, please.

MR. STRODE: Jason Strode.
(JASON STRODE SWORN BY ATTORNEY.)

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

MR. STRODE: Yes.

CHAIRMAN: And as far as the future and everything?

MR. STRODE: Yes.

CHAIRMAN: Do you have any questions?

MR. STRODE: No.

CHAIRMAN: Does anybody have any further questions?

(NO RESPONSE)

CHAIRMAN: Thank you for coming down.

If not the chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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AGRICULTURAL SUBDIVISION

ITEM 9
11755, 11765 Grandview Drive
Consider approval of agricultural subdivision plat.
Applicant: Peggy McDaniel & Anita Coons

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

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

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

MR. HOWARD: They're approximately 13.7 acres.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any further questions?

Yes, sir, Mr. Noffsinger.
MR. NOFFSINGER: Mr. Howard, what is the intended use of the property in this division?

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

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

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

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

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

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

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

CHAIRMAN: Is that a motion, Mr. Appleby?
MR. APPLEBY: I move to postpone it.

CHAIRMAN: Mr. Appleby has a motion for postponement.

MR. ROGERS: Second.

CHAIRMAN: We've got a second by Mr. Rogers.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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NEW BUSINESS

ITEM 10

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

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

CHAIRMAN: Does anybody from the audience have any questions?
(NO RESPONSE)

CHAIRMAN: Does anybody on the Staff have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MS. MOORMAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

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

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

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

I received some time ago a letter from the property section of the Kentucky Bar Association. That letter has been copied to me by several attorneys from around the state and locally. It addresses the question of non-attorneys representing clients during
quasi judicial proceedings such as our own, typically realtors and engineers. We got kind of dangerously close to that tonight. The bar association has recommended that for counsel for the local planning commissions admonish those who were doing that to not because it is practicing law without a license. In fact, admonish those of us who were working with planning commissions that if we did not do that that we would also be asculpitable as they are.

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

MR. APPLEBY: And this came from where?

MR. SILVERT: The Kentucky Bar Association.

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

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

MR. SILVERT: Yes. It would be a situation where to practice law you have to have a license to do so. It's their opinion, their ethical opinion that that's practicing law without a license.
At any rate the Chair is welcome to hear that testimony, certainly it's the Chair's courtesy, but I was admonished to make that announcement.

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

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

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

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

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.
STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )

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

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

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
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OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 19, 2010

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY