The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, November 11, 2010, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Drew Kirkland, Chairman
Ward Pedley, Vice Chairman
David Appleby, Secretary
Gary Noffsinger, Director
Madison Silvert, Attorney
Rev. Larry Hostetter
Irvin Rogers
Wally Taylor
Martin Hayden

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CHAIRMAN: I want to welcome everybody to the November 11th meeting of the Owensboro Metropolitan Planning Commission. Will you please rise. Our invocation will be given by Mr. Brian Howard.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Let's be mindful this November 11th is Veteran's Day. To all our Veterans we thank them for the great service and debt that they gave to our country and the great freedoms that we're allowed because of their efforts and sacrifices on all of our behalves. To our Veterans we solute you. Thank you very much.

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Our first order of business will be to consider the minutes of the October 14, 2010 meeting. Are there any additions, corrections?

(NO RESPONSE)

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

MR. PEDLEY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Pedley.

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

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ZONING CHANGES

ITEM 2

2501, 2531 Old Hartford Road; 1421, 1427 East 26th Street, 10.377 acres

Consider zoning change: From R-3MF Multi-Family Residential, R-1C Single-Family Residential and P-1 Professional/Service to P-1 Professional/Service

Applicant: The Carmelite Sisters of the Divine Heart of Jesus of Missouri

MR. SILVERT: Would you state your name, please?

MR. HOWARD: Brian Howard.

(BRIAN HOWARD SWORN BY ATTORNEY.)

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MR. HOWARD: I will note that the rezoning heard tonight will become final in 21 days after the meeting unless an appeal is filed. If an appeal is filed, then the rezoning application will be forwarded to the appropriate legislative body for their consideration. The appeal forms are available on the back table, in our office and on our website.

PLANNING STAFF RECOMMENDATIONS

The Planning Staff recommends approval subject to the condition and findings of fact that follow:

CONDITION

Access to Old Hartford Road shall be limited to the two access points currently serving the Carmel Home and access to East 26th Street shall be limited to the existing access point.

FINDINGS OF FACT

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;

2. The subject property is partially located in a Professional/Service Plan Area, where professional/service uses are appropriate in general locations and partially located in an urban residential plan area where professional/service uses are appropriate in limited locations;

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3. The proposal is a logical expansion of existing P-1 Professional/Service zoning located on the subject property; and,

4. The proposal is not a significant increase in P-1 Professional/Service use in the vicinity and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

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

CHAIRMAN: Do we have anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions?

(NO RESPONSE)

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

MR. HAYDEN: I make a motion to approve with Staff's Recommendation and with the Condition and Findings of Fact 1 through 4.

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

MR. APPLEBY: Second.

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

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MINOR SUBDIVISIONS

ITEM 3

6020, 6030, 6040 Jack Hinton Road, 11.746 acres

Consider approval of minor subdivision plat.

Applicant: Jack D. Jones, Daniel T. Reneer

MR. HOWARD: This plat comes before you because it would require Planning Commission's approval for exceptions to the zoning and subdivision regulations.

The two lots that are proposed for subdivision were originally created on a plat that actually came to the Planning Commission back in June of 2007.

At that time Staff did not recommend approval of the plat because it created lots that exceeded the three to one ratio and those types of things. However, these two lots did meet the minimum requirements of the subdivision regulations.

However, tonight what is being proposed is a division of the two lots that met subdivision regulations and creating three development tracts that don't meet any of the subdivision regulations.

There's a lot that doesn't have the minimum 100 feet
of road frontage, which is required under an A-R zoning. All three tracts exceed the three to one length to width ratio requirement.

So with that Planning Staff cannot support or recommend approval of this subdivision plat.

Be happy to answer any questions that you might have about it.

CHAIRMAN: Do we have anybody representing the applicant?

MR. RENEER: Yes, sir.

CHAIRMAN: Do you have any comments?

MR. RENEER: Yes, sir.

MR. SILVERT: Could you state your name, please?

MR. RENEER: Daniel Reneer.

(DANIEL RENEER SWORN BY ATTORNEY.)

MR. RENEER: Me and Jack bought this at an auction in attempting to split it up. We probably should have done a little more research.

The prints wasn't stamped saying that it couldn't be split up.

With that said that was a mistake of Planning Zoning. They told me that it shouldn't have left the office without it being stamped. If that had been -- it was on the site when we looked at it. We thought
everything was fine, other than we wasn't aware of the
change on the 100 foot road frontage.

Since then I've went back and tried to
purchase the other 15 feet that I need, and it's not
for sale. But with that said it's a creek. It's a
25, 30 foot wide creek. If I owned it, it's still not
good for anything.

I would just -- somebody made an exception
with the property next-door on the left-hand side.
It's a long lean lot. It doesn't meet the three to
one rule. I would just like to ask you to make an
exception on this one. I guess that's all I've got to
say.

CHAIRMAN: Mr. Noffsinger, in regards to his
comment about the exception made to the lot next-door.

MR. NOFFSINGER: Certainly there could have
been an exception to the lot next-door. I'm not sure,
but what I do know is there was an exception to the
property you bought. It did not meet the subdivision
regulations at the time that the property was divided.
That's why it had to come to the Planning Commission.
The Planning Commission has already approved one
exception on this, to create two lots that meet the
road frontage requirement, but exceed the depth to
width ratio.
Here, and what is really concerning, is that you're creating a lot that only has 86 feet of frontage and that's as wide as it gets. That requirement has not changed. That requirement has been the same since the early 1980s in terms of road frontage. So nothing has changed other than back several years ago the Planning Commission started enforcing the depth to width ratio. This division grossly exceeds the depth to width ratio. Where you have 100 feet of frontage and then you go back about 1200 feet.

I think by subdividing the property back a few years ago to create one tract that didn't meet the requirements and the one that did, an exception was approved then by this Commission.

Now we're asking to approve an additional exception to the exception. Typically this commission hasn't done that. That's not to say you can't, but if we do we need to make sure that we find, attach adequate findings as to why this situation is unique to other situations within the county that don't even make it before this board.

CHAIRMAN: Mr. Noffsinger, their exception is either side of this tract in the middle or are they included in this tract? Is that theirs too?
MR. NOFFSINGER: Yes. That lot is theirs and it's the lot that will only have 85 or 86 feet of frontage. It will only be 86 foot wide where the ordinance requires it be 100 foot wide.

CHAIRMAN: And then they're splitting up either side of that?

MR. NOFFSINGER: Yes. They had two tracts. The end result will be three tracts that do not meet the requirements at all. Where you had one that met all the requirements and the other one was the remainder which exceeded the depth to width ratio.

CHAIRMAN: Is there any way they can square that up? The back part of the property has no access I assume.

MR. NOFFSINGER: Right. It only has frontage on Jack Hinton Road. The exception that was approved by this commission back a few years ago was I think about the best you could do. Because you had a good development lot with the existing residence and then you had the balance of a lot that you could sell off for development. Here I don't know of any. I don't have any suggestions in terms of further subdividing this property because it does not meet the intent of the ordinance nor the actual regulations.

CHAIRMAN: Even if they didn't split this
property, if one owner had all of that property, what
would their situation be then?

MR. NOFFSINGER: Well, right now they have two
tracts and they can sell it as two tracts. One tract
has a residence on it. The other tract is vacant.

CHAIRMAN: The one tract being the one right
in sort of the middle? Like right there?

MR. NOFFSINGER: No. Actually it has frontage
on Jack Hinton Road for a total of 186 feet and goes
back 501 feet it looks like. Then the remainder has
100 feet of frontage along Jack Hinton Road and it
goes back the full distance of 1,177 feet.

What you see there, that middle lot is what
they're proposing to do. Proposing to consolidate the
existing smaller lot and then create the other three
from that or create the additional tract from that.

CHAIRMAN: Mr. Appleby.

MR. APPLEBY: Yes.

CHAIRMAN: I notice that you were studying it
very well. You're sort of our flag lot man. This
sort of comes under your specialty, doesn't it?

MR. APPLEBY: I don't see how it can be
divided more than two lots. I can't see any. I'd
like to help them, but I can't see any justification
for -- there's no -- I haven't got a finding to

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justify creating an 80 foot lot and leaving these
other two lots like this, unless somebody else has an
idea.

CHAIRMAN: Ward.

MR. APPLEBY: I don't see how it could be
divided into more than two lots.

MR. PEDLEY: I don't really have a finding
either. How you could do it unless you make an
exception. That's sort of been done once; is that
right?

MR. NOFFSINGER: Yes.

MR. APPLEBY: Was there a note on the plat
that the lot wasn't to be further divided?

MR. NOFFSINGER: There was not a note on the
plat because the Planning Staff was recommending
against that division. It was approved by this
commission and there weren't any additional notes
added to the plat, nor is there a requirement that it
be done. We do that in-house and we try to do that
in-house on every plat to alert people, but just
because that note is missing doesn't mean it can be
divided, especially when you don't even have adequate
road frontage to create the additional lots.

CHAIRMAN: Our unfortunate situation is we,
due to no fault of yours possibly, but there's been an

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exception already made on this property, which leaves
the property in such a way that, you know, it's out
every which way. You know, the depth to width. I
mean it's very very difficult for us. I mean
obviously we want to help you all. We're not even
near the gray area.

MR. RENEER: There's a drastic grade change is
why we separated it that way, on the left-hand side
facing the house. It makes it look like it's supposed
to be a separate lot to begin with. That was kind of
how we came up with this situation. Because if you
drive down the road it looks like this is a separate
lot and this is a separate lot. The ground comes up
probably three feet just like that. I've got
pictures.

CHAIRMAN: So you all bought that whole
section there together?

MR. RENEER: All of it in one piece, yes.
CHAIRMAN: Gary, being as it is, just one
piece of property going across the front --

MR. APPLEBY: It was two lots.

CHAIRMAN: It was two lots?

MR. RENEER: Yes, sir. We bought it one time
at auction all of it. It sold two or all in one.

CHAIRMAN: And you bought it?
MR. RENEER: Yes.

CHAIRMAN: I understand.

MR. RENEER: Thinking that we could split it up. Like I say, I tried pretty hard. The lady lives in Oklahoma or somewhere. I can't find the land owner, the lady that owned the creek, to get the other road frontage. It's not for sale. It is a pretty good size creek or ditch. If I did own the creek, you couldn't ever do anything with it.

CHAIRMAN: How much width encompasses the ditch?

MR. RENEER: Probably 20 to 25 feet.

CHAIRMAN: Gary, that 20 or 25 feet more --

MR. APPLEBY: It would be closer, but it's still not going to meet.

MR. NOFFSINGER: It would still exceed the depth to width ratio. What they would achieve is they would meet the minimum frontage requirements.

CHAIRMAN: What do they need?

MR. NOFFSINGER: They need about 14, 15 feet.

MR. RENEER: I have some pictures here if you want to see them.

CHAIRMAN: I would be glad to look at them.

MR. RENEER: This is the creek over on the left. The house is here. The grade that runs -- I
didn't catch it in there because I didn't know I was
going to need it or I would have took a picture of it.

The creek is on this side. Lot here and then
the house here. Then where this grade jumps up, this
was going to be the other lot. This is the creek
area. This is it. It's pretty deep. It's probably
15 foot deep.

MR. SILVERT: Would you like to submit those
pictures into the record as an exhibit?

MR. RENEER: Yes.

CHAIRMAN: Does anybody have a suggestion or a
motion?

In these situations we try to help, but I wish
you would have checked with us first.

MR. RENEER: I understand. I can see you're
trying to work with me. I don't know how to go about
knowing that there was already an exception if it's
not on the print. I don't know how to go about
finding that out when you pull up to a sale and
they've got a print here and it doesn't say anything.
I'm not putting any fault on anybody. I should have
made, I should have researched it better on the road
frontage, and I've tried to correct that. Even if I
had it, it's just on paper. It's not any good to you
or me. It's a creek. I tried to correct the road

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frontage problem. I didn't realize that I couldn't split it up.

MR. APPLEBY: What's the purpose of dividing it into three lots? Are you planning on selling off?

MR. RENEER: Yes, sir. I have people wanting to buy five acre lots. That's about what it is. I already had somebody. Gary Maglinger is our realtor. He had somebody waiting for me. They couldn't afford ten acres. Couple of years ago when I bought it I came to you all and asked could I split it up and that's when I realized there was problems. So I tried to sell it and couldn't sell it as is because people can't afford that much ground right now. Then I came back and I tried to find the lady to buy more road frontage hoping you would make an exception if I had enough road frontage. She doesn't want to sell it. She doesn't live there. She doesn't want to sell it. If I had it, it occurred to me if I had it, it's just on paper. It can't be used.

MR. APPLEBY: But that gives us something to hang our hat on. It would meet at least one of the criterias we needed to meet.

MR. RENEER: Right. I made a pretty good effort to purchase that and she just doesn't want to sell it. It was in her family.
MR. APPLEBY: So what's the status of the smallest tract? Have you got it sold?

MR. RENEER: It's rented.

MR. APPLEBY: Are you going to keep that?

MR. RENEER: I'm going to keep it unless somebody wants to buy it.

MR. APPLEBY: There's no way to combine that back in with one of these other tracts?

MR. RENEER: I don't know what to do about it. I've tried everything. Like I said, the lot beside it we made an exception. I realize you've already made an exception on this. I didn't realize that until tonight. I would have purchased this if I didn't think I could split it up basically. The road frontage issue is my fault. I guess all of it is my fault. I should have researched it all better. I'm just asking for an exception.

CHAIRMAN: We admire that you're going out purchasing property and trying to develop something. We're trying every way we can, but with this situation, as Mr. Appleby pointed out, you know, if you had one, if you had something going in your direction, maybe we could try to make something work out. It's just a tough situation. Unless somebody has an idea, I think the chair is ready for a motion.
and maybe in the future maybe something may
development. I think at this point in time unless
somebody else has an idea I think we're at the point
where the chair would be ready for a motion.

MR. APPLEBY: I can't see any way to break it
into more than two lots with that frontage. I mean I
would entertain a division some other way that didn't
create lots with less than 100 feet. If they wanted
to come back with something, I think we could probably
look at an exception on two lots that didn't meet the
minimum. I would have to recommend denial on this
one.

CHAIRMAN: We have a motion by Mr. Appleby for
denial.

MR. TAYLOR: Second.

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

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

NEW BUSINESS

ITEM 4

Consider a motion to go into closed session to discuss
pending or potential litigation.

CHAIRMAN: The chair would be ready for a
motion to go into closed session. When we go into closed session, we will adjourn from the closed session. So this will be the end of the formal part of our meeting. The rest of the meeting will be in closed session. We will adjourn right out of that closed session.

So is there a motion?

MR. PEDLEY: Motion to go into closed session.

CHAIRMAN: Motion by Mr. Pedley.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We're going into closed session.

MR. SILVERT: We'll get on the record that we will not be taking any action in the closed session.

CHAIRMAN: No. This is to discuss legal matters.

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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 18 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
30th day of November, 2010.

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

COMMISSION EXPIRES:  DECEMBER 19, 2010
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KENTUCKY

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