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OWENSBORO METROPOLITAN PLANNING COMMISSION

MARCH 14, 2002

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The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, March 14, 2002, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Drew Kirkland, Chairman
- Gary Noffsinger
- Nick Cambron
- Dave Appleby
- Jimmy Gilles
- Irvin Rogers
- Sister Vivian Bowles
- Judy Dixon
- Dr. Mark Bothwell
- Martin Hayden
- Stewart Elliott,
- Attorney

\* \* \* \* \*

CHAIRMAN: I would like to call our March 14 Owensboro Metropolitan Planning Commission meeting to order. Please rise. Our invocation and pledge of allegiance will be given by Mr. Dave Appleby.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

(NO RESPONSE)

1 CHAIRMAN: Chair is ready for a motion.

2 DR. BOTHWELL: Motion to approve.

3 CHAIRMAN: Motion for approval by Dr.

4 Bothwell.

5 MR. CAMBRON: Second.

6 CHAIRMAN: Second by Mr. Cambron. All in

7 favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, Mr. Noffsinger.

11 -----

12 PUBLIC FACILITIES PLAN  
13 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

14 ITEM 2

15 Portion 2501 Block Westwood Avenue  
16 Land Disposition  
17 Consider comments regarding a proposal to close  
18 approximately 272 feet of Westwood Avenue.  
19 Referred by: City of Owensboro

18 MR. NOFFSINGER: Mr. Chairman, the  
19 Planning Staff has reviewed this application. We find  
20 the application is not in conflict with the Adopted  
21 Comprehensive Plan. It is a proposal to close a  
22 portion of Westwood Avenue and we reconstruct the  
23 streets so that it changes the flow of traffic  
24 somewhat, but it actually improves the situation. We  
25 recommend that you forward a letter of that effect to

1 the City of Owensboro.

2 CHAIRMAN: Is there anybody here  
3 representing the City of Owensboro?

4 (NO RESPONSE)

5 CHAIRMAN: Does anybody from the  
6 commission have any questions?

7 (NO RESPONSE)

8 CHAIRMAN: If not the Chair is ready for a  
9 motion.

10 MR. CAMBRON: Motion for approval.

11 CHAIRMAN: Motion for approval by Mr.  
12 Cambron.

13 MR. HAYDEN: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Next item.

19 -----

20 ZONING CHANGES - CITY

21 ITEM 3

22 1520, 1524, 1528 Breckenridge Street, 0.39 acres  
23 Consider zoning change: From R-4DT Inner-City  
24 Residential to B-4 General Business  
Applicant: Daviess County Board of Health

25 MR. ELLIOTT: State your name, please.

1 MS. WATSON: Becky Watson.

2 (MS. BECKY WATSON SWORN BY ATTORNEY.)

3 PLANNING STAFF RECOMMENDATIONS

4 Staff recommends approval because the proposal is  
5 in compliance with the adopted Comprehensive Plan.

6 This recommendation is made subject to the conditions  
7 and findings of fact that follow:

8 Conditions:

9 1. Driveway access shall be limited to one  
10 access point onto Breckenridge Street, not to exceed  
11 40 feet in width at the property line to be located a  
12 minimum of 50 feet from the right-of-way at the  
13 intersection of Breckenridge Street and East 16th  
14 Street;

15 2. A roadway buffer of 40 feet from the  
16 centerline of Breckenridge Street shall be established  
17 along Breckenridge Street. No parking or required  
18 landscaping shall be located within this roadway  
19 buffer;

20 3. Screening shall be provided between the  
21 subject property and the adjoining residentially zoned  
22 properties. A 6' high continuous planting, hedge,  
23 fence, wall or earth mound shall be provided within a  
24 10-foot landscape easement;

25 4. Perimeter landscaping of vehicular use area

1 with a 3-foot high continuous planting, hedge, fence  
2 or wall within a 3-foot wide landscape easement and  
3 one tree for every 40 feet of vehicular use area  
4 boundary; and,

5 5. Submittal and approval of a lot consolidation  
6 combining the three lots into one lot.

7 Findings of Fact:

8 1. The subject property is located within a  
9 Business Plan Area, where general business uses are  
10 appropriate in limited locations;

11 2. The subject property adjoins B-4 General  
12 Business zones and uses; and,

13 3. The applicants proposal is a logical  
14 expansion of an exiting B-4 General Business zone  
15 abutting the same street that would not significantly  
16 increase the extent of the zone in the vicinity and  
17 would not overburden the capacity of roadways and  
18 other necessary urban services that are available in  
19 the affected area.

20 MS. WATSON: We would like to enter the  
21 Staff Report as Exhibit A into the record.

22 CHAIRMAN: Is anybody here representing  
23 the applicant?

24 MR. ELLIOTT: State your name, please.

25 MR. RINEY: Jim Riney.

1 (MR. JIM RINEY SWORN BY ATTORNEY.)

2 MR. RINEY: I'm here to answer any  
3 questions. We know that there were several conditions  
4 that were just listed. Mrs. Watson made the client  
5 aware of those and those are consistent with what's in  
6 the ordinance and will be dealt with on the  
7 development plan.

8 CHAIRMAN: Mr. Riney, your client agrees  
9 to the conditions?

10 MR. RINEY: I've made them aware of it,  
11 Mr. Chairman.

12 CHAIRMAN: Is there anybody from the  
13 audience that has any questions for the applicant's  
14 representative?

15 (NO RESPONSE)

16 CHAIRMAN: Anybody from the commission  
17 have questions of the applicant's representative?

18 (NO RESPONSE)

19 CHAIRMAN: If not the Chair is ready for a  
20 motion.

21 MR. CAMBRON: Motion for approval, Mr.  
22 Chairman, with Conditions 1 through 5 and Findings of  
23 Fact 1 through 3.

24 MR. GILLES: Second.

25 CHAIRMAN: We've got a motion for approval

1 by Mr. Cambron. Second by Mr. Gilles. All in favor  
2 raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 ITEM 4

7 1920 McFarland Avenue, 1.84+acres  
8 Consider zoning change: From B-4 General Business to  
9 I-2 Heavy Industrial  
10 Applicant: West Side Auto Parts, Inc., Henry E.  
11 Phillips, Mary E. Posey

12 PROPOSED ZONE & LAND USE PLAN

13 The applicant is seeking an I-2 Heavy Industrial  
14 zone. The subject property is located in a  
15 Business/Industrial Plan Area, where heavy industrial  
16 uses are appropriate in very limited locations.

17 SPECIFIC LAND USE CRITERIA

18 (a) Building and lot patterns; outdoor storage  
19 areas Building and lot patterns should conform to  
20 the criteria for "Non-Residential Development" (D7)  
21 and outdoor storage yards, with "Buffers for Outdoor  
22 Storage Yards" (D1). Furthermore, any building or  
23 outdoor storage, loading or working areas (except  
24 accessory parking areas) should be located at least  
25 three-hundred (300) feet from any urban residential  
area and one-hundred (100) feet from any other area  
except those containing light industrial or

1 agricultural/forestry uses.

2 (b) Logical expansions outside of Industrial  
3 Parks Existing area of Heavy Industrial use that are  
4 located outside of planned Industrial parks may be  
5 expanded onto contiguous land that generally abuts the  
6 same street(s). Such an expansion should not  
7 significantly increase the extent of industrial uses  
8 in the vicinity and outside of Industrial Parks. Such  
9 an expansion should not overburden the capacity or  
10 roadways and other necessary urban services that are  
11 available in the affected area. Also, such an  
12 expansion should be of adequate size and shape to  
13 provide the separation from incompatible uses cited in  
14 criteria (a) above.

15 APPLICANT'S FINDINGS

16 The Land Use Element of the community's  
17 Comprehensive Plan recommends I-2 Heavy Industrial in  
18 very-limited locations. Rezoning the site will result  
19 in correcting the zone classification to be consistent  
20 with the land use, which existed at the site for at  
21 least the past 20 years.

22 The site is on the south side of McFarland  
23 Avenue. In addition to this site, the zoning  
24 applicant has operated a similar operation (storage  
25 and dismemberment of disabled vehicles) on the north



1 side of McFarland Avenue at Crabtree Avenue for  
2 approximately 50 years. The general character of the  
3 neighborhood, including the disabled vehicle storage  
4 and dismemberment has remained essentially unchanged  
5 for approximately 20 years, since the extension of  
6 McFarland Avenue westward.

7 The site contains approximately 1.9 acres and is  
8 non-residential in size and character. A solid  
9 perimeter fence currently screens the site. Said  
10 screen is characteristic of any industrial tract.

11 The site is relatively contiguous as previously  
12 defined by the OMPC to the existing I-2 site of the  
13 West Side Auto Parts operation. Currently, the site  
14 adjoins industrial zones at the west and southern  
15 corner of the site.

16 All urban services are available.

17 Inasmuch as the existing land use has existed at  
18 the site for approximately two decades, the rezoning,  
19 conforming to the existing use, will not overburden  
20 the capacity of the roadway.

#### 21 PLANNING STAFF REVIEW

22 The subject property is located in the 1900 block  
23 of McFarland Avenue. Land use criteria applicable to  
24 this request are reviewed below.

#### 25 GENERAL LAND USE CRITERIA

## 1 Environment

2 No important environmental criteria apply to the  
3 subject property.

## 4 Urban Services

5 All urban services are available to the site.

## 6 Development Patterns

7 The subject property is located in a mixed-use  
8 area. Property to the north across McFarland Avenue  
9 is zoned R-4DT and is residential in use. Property to  
10 the east of the subject property is zoned B-4 General  
11 Business and is used for junk vehicle storage. This  
12 is a non-conforming use. Property to the south is  
13 zoned B-4 and I-1 Light Industrial and contains  
14 business and industrial uses. Property to the west is  
15 zoned I-1 and is used for a plumbing contractor's  
16 office. There is also property to the west that is  
17 zoned R-4DT Inner-City Residential. The applicant  
18 proposes to use the subject property to store and  
19 dismember disabled vehicles. This use would require a  
20 conditional use permit to be approved by the Owensboro  
21 Metropolitan Board of Adjustment.

## 22 Land-Use Intensity, Clusters and Buffers

23 In I-2 Heavy Industrial Zones, any building or  
24 outdoor storage, loading or working areas (except  
25 accessory parking areas) should be located at least

1 three-hundred (300) feet from any urban residential  
2 area and one-hundred (100) feet from any other area  
3 except those containing light industrial or  
4 agricultural/forestry uses. The location of  
5 residential zoning to the west and north requires a  
6 300-foot buffer to be established in those locations.  
7 The B-4 General Business zoning on the east would  
8 require a 100-foot buffer at that location. The size  
9 and shape of the property would not accommodate these  
10 buffer requirements without the granting of a variance  
11 by the Owensboro Metropolitan Board of Adjustment.

#### 12 Intersection & Driveway Spacing

13 McFarland Avenue is classified as a minor  
14 arterial roadway. Driveway access on McFarland Avenue  
15 should be limited to one access point, no to exceed 50  
16 feet in width at the property line. Currently, the  
17 subject property meets the driveway access  
18 requirements for the functional classification of the  
19 roadway. No additional driveway access would be  
20 permitted.

#### 21 Roadway Buffer Standards

22 A roadway buffer of 40 feet from the street  
23 centerline applies to McFarland Avenue. No required  
24 parking or landscaping is permitted within the roadway  
25 buffer.

## 1 SPECIFIC LAND USE CRITERIA

2 The subject property is located in an area of  
3 mixed industrial, business and residential use. The  
4 property immediately to the east is zoned B-4, but  
5 contains a legal, non-conforming heavy industrial use  
6 of storage of junk vehicles. The expansion of this  
7 use onto the subject property can be considered a  
8 logical expansion of a heavy industrial use that does  
9 not significantly increase the extent of industrial  
10 uses in the vicinity. There are other industrial uses  
11 located in the area.

12 However, the subject property adjoins  
13 residentially zoned property. The criteria for an  
14 expansion specifically state that the expansion should  
15 be of a size and shape to accommodate the buffer  
16 requirements to separate incompatible land uses. In  
17 this case, the 300-foot setback from the residentially  
18 zoned property could not be met and still maintain a  
19 usable area on the subject property. Because the  
20 subject property adjoins and is adjacent to  
21 residential property and a residential plan area, the  
22 buffering requirement of a 300-foot setback from those  
23 properties is critical to the use of the property for  
24 an industrial use. Since this setback is primarily  
25 for the benefit of the owners of property in the

1 neighborhood, due consideration should be given to  
2 neighboring residents with respect to the established  
3 lot patterns in their neighborhoods.

4 The applicant argues that the proposed zoning is  
5 the appropriate zone for the property, stating that  
6 the current use of the property for the storage of  
7 junk vehicles has existed for 20 years. The property  
8 has been cited several times in the past 10 years for  
9 being in violation of the Zoning Ordinance. The B-4  
10 General Business zoning classification permits  
11 operable vehicles to be parked there, but not  
12 inoperable, wrecked or disassembled vehicles. The  
13 current use of the property is a violation of the  
14 Zoning Ordinance.

15 The City of Owensboro's Community Development  
16 Department has begun to collect very preliminary  
17 information to review the possibility of developing a  
18 project for a residential revitalization area for  
19 properties in the vicinity of the subject property.  
20 This redevelopment area would include residential  
21 properties to the north of the subject property across  
22 McFarland Avenue. We should remain cognizant of the  
23 possibility of residential redevelopment in this area  
24 across McFarland Avenue. While there are existing  
25 industrial uses located in the vicinity, these are

1 oriented toward Old Henderson Road within the  
2 Business/Industrial Plan area and not adjoining  
3 residential block fronts.

4 As stated above, due consideration should be  
5 given to neighboring residents with respect to the  
6 established lot patterns in their neighborhoods.  
7 There is currently a mixture of business uses, light  
8 and heavy industrial uses, and residential uses within  
9 this area. The frontage of the subject property on  
10 McFarland Avenue faces an existing developed  
11 residential block. The increase of heavy industrial  
12 use in the area could be detrimental to the existing  
13 residences that are established there, unless there  
14 can be conditions placed on the property to minimize  
15 negative effects that are acceptable to the owners in  
16 the neighborhood.

17 PLANNING STAFF RECOMMENDATIONS

18 Staff recommends denial because the proposal is  
19 not in compliance with the community's Comprehensive  
20 Plan. This recommendation is made subject to the  
21 findings of fact that follow:

- 22 1. The subject property is located in a  
23 Business/Industrial Plan Area, where heavy industrial  
24 uses are appropriate in only very-limited locations;
- 25 2. The subject property adjoins existing

1 residentially zoned and developed property to the west  
2 and to the north across McFarland Avenue and zoning  
3 the subject property to I-2 Heavy Industrial would  
4 permit an incompatible land use;

5 3. The applicant's proposal is not a logical  
6 expansion of heavy industrial uses existing in the  
7 area because the size and shape of the property are  
8 not adequate to meet the setback requirements of 300  
9 feet from residentially zoned properties; and,

10 4. The use of the subject property for disabled  
11 wrecked vehicle storage and dismemberment may create a  
12 nuisance for the adjoining residential properties.

13 MS. WATSON: We would like to enter the  
14 Staff Report as Exhibit B in the record.

15 MR. CAMBRON: Mr. Chairman, I need to  
16 excuse myself from any comments or voting on this item  
17 due to a business relationship I have with one of the  
18 applicants.

19 MR. ELLIOTT: Disqualify.

20 MR. CAMBRON: Disqualify myself.

21 CHAIRMAN: Let the record know Mr. Cambron  
22 has disqualified himself.

23 Is there anybody here representing the  
24 applicant?

25 Mr. Riney. You've been sworn in. You

1 want to make a statement?

2 MR. RINEY: Yes, sir. I'm Jim Riney. Let  
3 the record show that I'm here tonight as a licensed  
4 professional engineer and license professional land  
5 surveyor to answer the technical issues of the issues  
6 that area within the application that the assisting  
7 owner is preparing.

8 We have heard and read the Staff Report.  
9 We understand that the Staff is not in a position to a  
10 make a recommendation maybe as much because of the  
11 reason of the requirement for variances and items to  
12 be dealt with through the Board of Adjustments. The  
13 owner has indicated that should the Planning  
14 Commission see fit to allow the rezoning to move  
15 forward that they would ask us to move forward with  
16 the proper applications for the variances that may be  
17 needed.

18 We know that the site has existed for over  
19 20 years in the present use. That the neighborhood is  
20 a mixed use area. The neighborhood and this business  
21 use have grown up together over the years. It's not a  
22 new use that's coming in. It's an effort by the  
23 owners to comply with a request from the building  
24 inspector and Planning Staff to come in conformance  
25 with the regulations.



1                   I think at this point I'll say that we'll  
2 answer questions. Mr. Doug McFaddin is here with his  
3 brother Aaron who represent West Side Auto. Mr.  
4 Philips is here and some other folks here, but I also  
5 understand there's some concerns from the neighbors.  
6 We'll be prepared later on to answer some of those  
7 concerns.

8                   CHAIRMAN: Thank you. Are you aware that  
9 Ms. Watson when reading the comment of the Staff  
10 unless there are conditions placed on the property to  
11 minimize the negative effects that are acceptable to  
12 the owners and the neighborhood. Do you all have any  
13 conditions or anything that you were going to propose  
14 at this time?

15                   MR. RINEY: Yes. We have some items. We  
16 weren't sure what or at least I wasn't sure what all  
17 the concerns were.

18                   CHAIRMAN: If you're prepared at this  
19 time, Mr. Riney, why don't we see what questions some  
20 people from the neighborhood might have and then I  
21 think we could address them at that time might be the  
22 appropriate way to do this. Just as long as you're  
23 prepared to meet the conditions.

24                   MR. RINEY: Sure.

25                   MR. CHAIRMAN: Is there anybody here

1 representing the neighborhood?

2 MR. WILSON: Mr. Chairman, William Wilson,  
3 Jr. I'm here on behalf of William and Charlotte  
4 Bradley and Charlotte's sister, Ruth Adkins.

5 (MR. WILLIAM WILSON SWORN BY ATTORNEY.)

6 MR. WILSON: Mr. Chairman, if I might, I  
7 would like to present to the commission a drawing of  
8 the plat from PVA records.

9 CHAIRMAN: Mr. Wilson, if you'll hand  
10 those - - do you have copies or just one?

11 MR. WILSON: No. I've just got this one I  
12 would like to place in the record and that's the  
13 properties, residential properties, all of them that  
14 are owned by my clients. I'd also like to place in  
15 the record an open letter to the commission and a  
16 petition of the residents of these properties in  
17 opposition of this rezoning.

18 CHAIRMAN: Mr. Wilson, if it's all right  
19 with you I will pass these to the commission members  
20 while you're presenting your presentation.

21 MR. WILSON: That's fine.

22 Mr. Chairman and Members of the  
23 Commission, Mrs. Bradley and her sister have owned  
24 property in this area for back to the time it was  
25 first established. They were both on Girvin Court

1 there where most of the properties are. I don't know  
2 how many of you have actually been down there to take  
3 a look at these properties, but it's an extremely neat  
4 and orderly residential subdivision.

5 Several of these properties are on  
6 McFarland Avenue right across the street from this  
7 proposed rezoning and several of them run down Girvin  
8 Court which is a dead-end street.

9 I'll be frank in admitting that we've had  
10 a long running relationship with the owners of West  
11 Side over this fencing problem, street problems in the  
12 neighborhood. A few years ago, I believe it's called  
13 Graves Lane, we had a situation back in '95 where they  
14 had constructed a building out in the city's right of  
15 way on Graves Lane. We went through some zoning and  
16 negotiating matters and changed boundary lines and  
17 agreed to things in exchange for fences and the city  
18 backed off on that and allowed that building to remain  
19 where it was, which is out in the roadway I believe.

20 We've got a history down there of things  
21 just keep getting done. Once enough complaints are  
22 made we get something done to try to bring them into  
23 compliance in hopes that the situation will go away.

24 Well, this situation across McFarland  
25 Avenue, you know, my clients are not willing for it to

1 go away. They are proud of the properties that they  
2 own down there and that they keep up really up nice.  
3 You can go look at them and any of you will see that.

4           The applicant is saying that it has an I-2  
5 property on a relatively contiguous piece of property.  
6 Now, I don't know what relatively contiguous means.  
7 To me contiguous is you're contiguous or you're not  
8 contiguous, but I know what they're talking about.  
9 They're talking about West Side Auto Parts facility  
10 that the application says that's located on McFarland  
11 Avenue at Crabtree. Well, if you look in the  
12 phonebook and anywhere else it's located at 1130  
13 Crabtree Avenue. It's located on Crabtree Avenue at  
14 McFarland perhaps, but there's nothing going up and  
15 down McFarland Avenue on either side of these  
16 residents or across that has any, that has any type of  
17 industrial use. The industrial use is around the  
18 corner on down the next block on Old Henderson Road  
19 and there are some properties down there and there are  
20 no residences there for many hundreds of feet from the  
21 intersection with Crabtree. That's just not the case  
22 on McFarland.

23           These folks are entitled for the character  
24 of that neighborhood to stay as it is in the absence  
25 of the Planning Staff or the courts, what have you,

1 that justify an encroachment into this or area that's  
2 abutted by these residential properties.

3 The fact that there isn't sufficient room  
4 in this property for the setbacks that would be  
5 required for an I-2 classification. Of course, that's  
6 important also. Even if there were, my people would  
7 still probably have a problem with this because the  
8 residential nature of their investment and their  
9 development down there. This property is just not  
10 appropriate as the Staff has correctly recommended for  
11 an industrial classification. Not only would we  
12 implore this Commission to deny this request and  
13 follow the recommendation of the Staff, we would also  
14 go further than that and ask that this Commission  
15 direct its Staff and empower the Staff to go forward  
16 in bringing this property into compliance. It's out  
17 of use. We have pictures of everything down there.  
18 We've got signs there that say this is equipment  
19 sales. Well, this isn't equipment sales in there.  
20 It's a junk yard being operated. It clearly needs, it  
21 needs an industrial classification to warrant it. I'm  
22 aware of proceedings that have been under way by this  
23 department to do just what I'm asking now be done.  
24 This application came along and I think they've been  
25 put on the back burner. I would hope that you all

1 would follow the oath that you all took and follow the  
2 law of the ordinances of this city and enforce the  
3 zoning ordinance down there and get this property into  
4 a proper B-4 use which is what it is properly zoned  
5 for. Thank you very much.

6 CHAIRMAN: Mr. Riney, do you have any  
7 comments at this time?

8 MR. RINEY: Yes. Let me go ahead and say  
9 that the applicant did, just for the record so you'll  
10 know, did contact attorney that has dealt with other  
11 zoning matters for them. Unfortunately he had a  
12 conflict in schedule tonight and couldn't be here.  
13 They've asked me to go ahead and speak.

14 They are not particularly with the idea of  
15 speaking before this group, but something needs to be  
16 said to confirm what evidence, information that  
17 they're ready to present. We'll go ahead and present  
18 that.

19 We understood that there were concerns  
20 from the neighborhood. As Mr. Wilson said, there's  
21 been some dialogue between the neighbors and the folks  
22 at West Side. This business has been there for  
23 several years. They are in fact requesting a zoning  
24 so that they can use it for the auto disassemble that  
25 their business is right now. They did in the past

1 have some equipment sales at the site, but from what I  
2 gather they have abandoned that business at this site  
3 and want to move forward with the auto yard.

4 Let me ask Mr. McFadden if he would to go  
5 ahead and bring up to the chairman. There's a listing  
6 that has been prepared of items that West Side has  
7 become aware of that might help the commission know  
8 that the applicant recognizes some of the neighborhood  
9 concerns and what in fact the applicant proposes to  
10 do.

11 If you could distribute those. There  
12 should be enough copies.

13 CHAIRMAN: Has Mr. Wilson been made aware  
14 of these items?

15 MR. RINEY: No, sir. We've got enough  
16 copies for Mr. Wilson.

17 CHAIRMAN: Mr. Wilson, would you come  
18 forward and let me hand you a copy.

19 MR. RINEY: I'm going to go through this  
20 not to insult your intelligence, but there's some  
21 items to kind of amplify what these items are. This  
22 was a list that was developed by the applicant to try  
23 to address those concerns as I said earlier of the  
24 neighborhood. Some of those items have even moved  
25 forward since we first talked about this list.

1                   The first item is to install a ten foot  
2 high solid fence around the entire perimeter. Mr.  
3 McFadden has copies of pictures here that show the  
4 fence along McFarland Avenue that has been constructed  
5 today. I ask him to go ahead and distribute those and  
6 give one to Mr. Wilson.

7                   Pictured in the photograph is a reluctant  
8 employee of West Side. The gentleman was chosen  
9 because he's like me, he's a little tall in stature.  
10 He's about 6'4" just so that you would know that that  
11 fence that's being constructed is a ten foot high  
12 solid fence. As I said the fence that's being  
13 constructed to date is along the McFarland Avenue  
14 frontage. Mr. McFadden has advised me that they have  
15 enough fencing materials on site. They're going to go  
16 ahead and continue the fencing of the entire subject  
17 property with this same brown metal fence. I do know  
18 that the fence is 10 feet tall because I did measure  
19 it early this morning. The existing fence that this  
20 is replacing is a chain-link fence with slats. That  
21 fence is an 8 foot fence which is probably adequate in  
22 a lot of situations, but the applicant has gone the  
23 extra mile to go ahead and get the 10 foot fence for  
24 additional screening.

25                   The next item, Number 2, is to install



1 landscaping along McFarland in accordance with the  
2 local zoning ordinance. That item pretty much speaks  
3 for itself. That work has not been done. Once the  
4 fencing is completed then they put in the position to  
5 complete that work.

6 The third item is a roadway buffer. We  
7 had some conversations with staff the other day.  
8 Staff wanted to be sure that the roadway buffer in the  
9 zoning ordinance is complied with.

10 If memory serves me right we were talking  
11 about a buffer with Mr. Noffsinger that's maybe 40  
12 feet from the center of the existing street.

13 The fourth item is a pedestrian gate in  
14 this solid fence. In fact, that has been constructed.  
15 Mr. McFadden has some pictures that we'll distribute a  
16 little later that show that. The purpose of that  
17 fence is to allow the employees to have access into  
18 the yard and that goes hand in hand with item Number 5  
19 which would be the closure. I think this is a very  
20 important item for the neighborhood as well. The  
21 closure of the vehicular access fence off of McFarland  
22 Avenue.

23 So you get a 10 foot high fence along  
24 McFarland Avenue, close the opening that's there now  
25 that they use for ingress and egress on a daily basis.

1 Install a pedestrian gate. In fact, that gate has  
2 been installed and that gate has been installed at the  
3 corner of the lot that's closest to Crabtree Avenue  
4 and at the furthestest point from the neighborhood  
5 so-to-speak on McFarland Avenue.

6 So they have already implemented part of  
7 these items in trying to show good faith.

8 The sixth item is do not stack vehicles  
9 above the perimeter fence. There has been some  
10 concern in the past or some history when they were  
11 trying to shuffle some inventory and so forth if I  
12 understand the facts correctly. The vehicles were  
13 temporarily stacked above the existing eight foot  
14 fence that's out there now, but they will commit to  
15 keep the whatever stacking they do within the vertical  
16 height, within the vertical limits of the proposed 10  
17 foot high fence.

18 There are also some pictures and  
19 photographs. Those photos show how the vehicles are  
20 set on stands and are stacked two vehicles high so  
21 that they won't exceed the proposed perimeter fence  
22 height.

23 The seventh item is to restrict parking  
24 along McFarland Avenue so it is parallel to curb side  
25 parking. Evidently there's been some problem with

1 some random parking along the street by an individual.  
2 I don't know if customers or what the basis, employees  
3 or whatever, but to comply with whatever city  
4 ordinances are in effect about parking along curb side  
5 or parallel parking along city streets. That would  
6 mean therefore would be no parking in the drive lanes  
7 or travel lanes.

8 The eighth item is to engage a pest  
9 control agency, company to monitor the site. There's  
10 been some concerns about some sort of pest or varmints  
11 at the site. They would commit to at least twice a  
12 year to have an inspection. As a matter of fact,  
13 we've got another item.

14 Doug has a copy of an inspection report  
15 that was - - an inspection was performed today as a  
16 matter of fact by Action Pest Control, a well-known  
17 pest control agency.

18 To address the issue, one of the items was  
19 the concern about rats. The report, you can read for  
20 yourself, indicates that they did not find any visible  
21 burrows at the time. Did find debris left side. I'm  
22 not sure. No burrows found. That's effective as of  
23 today as far as the pest control people.

24 The ninth item would be, and this would be  
25 important possibly to the Planning Staff as well as to

1 the neighborhood, to provide an entrance apron onto  
2 Old Henderson Road so that the access that would  
3 service this site would be from Old Henderson Road.

4 As a comment was made earlier this  
5 evening, the primary area of commercial industrial  
6 property that exist today is on Old Henderson Road.  
7 So the applicant is willing to close the McFarland  
8 Avenue access permanently and to open the access point  
9 to Old Henderson Road to be least offensive to the  
10 neighborhood, to the residential neighborhood. Based  
11 on the number of trips that the applicant anticipates  
12 that they normally have, somewhere one or two trips a  
13 day, maybe three trips a week sometimes in and out of  
14 the storage compound, it should not be a nuisance to  
15 the neighborhood over on Old Henderson Road. They  
16 would also agree to construct an entrance, a  
17 semi-concrete entrance that would be in conformance  
18 with the city engineer's office requirement and they  
19 require a permit where they regulate the construction  
20 for those entrances as well.

21 The tenth item would be to routinely  
22 monitor the items above that would need to be  
23 monitored, monitor the condition of the fence to make  
24 sure it is maintained. That the weather damage or  
25 vandals or whatever haven't created a problem either

1 for the applicant or for the neighborhood.

2 The eleventh item there was some report of  
3 an odor from the storage yard. Applicant had proposed  
4 to buy, they have in fact purchased a fuel recycling  
5 piece of equipment or hardware. That they say is  
6 probably the number one offender for odor from these  
7 types of facilities. They not only propose to do  
8 that. They have put their money where their mouth is  
9 and they have purchased that piece of equipment so  
10 that they can recycle that fuel and eliminate that  
11 odor source.

12 As was stated in the record, the facility  
13 has existed for probably two decades if not longer. I  
14 personally can recall when Green Coal Company existed  
15 at this site. They had their road tractors and  
16 trailers that they used for transporting coal there.  
17 My memory was that they had even a bone yard back  
18 there where they kept some of the old equipment and so  
19 forth. This use is not necessarily something that's  
20 new. Certainly is not new, but it has just occurred  
21 in the last 20 years. Even prior to that, I am  
22 admitting I'm getting older, but prior to that I can  
23 remember that VanOver Coal Company owned that facility  
24 before Mr. Green bought the coal company and that they  
25 had equipment in there, both tractors, road tractors

1 and mining type of equipment. So this facility has  
2 seen those types of hardware and equipment in there  
3 for several years.

4 I believe I'll leave that with the  
5 commission at this time. If you've got any questions  
6 or if we need to hear anything from the owner, we'll  
7 be glad to try to answer those questions or deal with  
8 those issues.

9 CHAIRMAN: Thank you, Mr. Riney.

10 Mr. Wilson, do you have some comments?

11 MR. WILSON: If I might, yes.

12 Mr. Chairman, I'd like to set the record  
13 straight on one thing. I personally about 4:00 this  
14 afternoon I called and spoke with J.D. Myer who was  
15 listed as the attorney for the applicant on the  
16 information that was sent out to the neighbors merely  
17 as a courtesy to tell him I would be here in  
18 opposition with the rezoning tonight. He knew nothing  
19 about this rezoning to be on the agenda tonight. I'm  
20 sure Jim was told what he says he was told, but there  
21 was no conflict of interest with their attorney. He  
22 knew nothing about it at 4:00 this afternoon.

23 Mr. Chairman, regardless of these things  
24 that they're talking about doing in the neighborhood,  
25 which are news to us, that is not at all influence or

1 change the position of the folks that live and have  
2 investment across the street. This industrial zoning  
3 classification being sought is merely not called for  
4 by the plan. It's not called for by the  
5 recommendation of your staff which is to the contrary.  
6 We merely ask this commission to follow the  
7 recommendations of the staff of the law as we see it  
8 here in Kentucky. The property's shape, size. It's  
9 certainly, it's just not big enough to go into an  
10 industrial classification even in the absence of  
11 opposition. They cannot comply with the setbacks that  
12 are required and there certainly is not going to be  
13 any agreement by the neighbors to weigh the 300 foot  
14 setback to 100 foot setback. It's just most  
15 appropriate for industrial classification. If the  
16 property were divided off and that fronting on Old  
17 Henderson Road with R industrial classification, that  
18 may be a different ball game over there, but not on  
19 McFarland Avenue.

20 This talk about a fence and all. I've  
21 been down and looked at the fences and I'm sure you  
22 all have too. Being we're talking about what  
23 wonderful fences we're going to put up I would ask  
24 commission to pass these around. These are pictures  
25 of the houses owned by my clients and of the fencing.

1                   CHAIRMAN: Mr. Wilson, let me stop you.  
2                   Let me make the hand these out to the commission and  
3                   make your statements there for the mike so we'll be  
4                   sure and get it.

5                   MR. WILSON: These are the ones that  
6                   depict the subject area. These are all homes in the  
7                   area.

8                   Mr. Chairman, several of those photos are  
9                   of homes on Girvin Court that back up to the  
10                  applicant's business over on Crabtree Avenue. Couple  
11                  of them are showing the fence. It's just falling down  
12                  and terrible state of disrepair. There are holes in  
13                  the fence down on Tenth Street side, on the Girvin  
14                  Court side. You drive around the area, which I did  
15                  today, I think you'll see plenty of them on this same  
16                  property over on the Old Henderson Road side. It's  
17                  the old fence over there.

18                  The things that the applicant is  
19                  indicating it's willing to commit to if this rezoning  
20                  were allowed in no way influence the position of my  
21                  clients. It's nice that they're willing to abide by  
22                  the city ordinances. Many of these things are the law  
23                  anyway. We are just adamantly opposed to this  
24                  rezoning. We would ask this board to not only vote  
25                  now bring it on to adopt the recommendation of the



1 Staff to deny it, but also direct the Staff to bring  
2 this property into compliance with the B-4 zoning  
3 classification. Thank you.

4 CHAIRMAN: Mr. Noffsinger, do you have a  
5 comment?

6 MR. NOFFSINGER: Yes, Mr. Chairman. I  
7 have a question of Mr. Riney and then I also would  
8 like to make a statement for the record.

9 Mr. Riney, you have a long list of items  
10 that the applicant says that they're willing to  
11 address and provide, but you might have mentioned this  
12 and I missed it and if so I apologize. What's the  
13 time frame on implementing these conditions? Let's  
14 say you're successful in convincing the Planning  
15 Commission this should be rezoned, you're successful  
16 with the Board of Adjustment with the variance and the  
17 Conditional Use Permit. What's your time frame in  
18 terms of implementing each of these conditions?

19 MR. RINEY: Well, the time frame is that  
20 we would start immediately. I guess in essence they  
21 have, Mr. Noffsinger, because the screening has been  
22 installed on McFarland Avenue.

23 Mr. McFadden indicates that within four to  
24 six months he thinks that they would have everything  
25 completed, but they're serious enough about it to get

1 on with it. That's why I made the point that on one  
2 or two of these items not only were they on the list,  
3 but they have been completed. Just like the recycle  
4 machines, getting the fence, the gate and fence and so  
5 forth.

6 MR. NOFFSINGER: So that's four to six  
7 months from the time the Board of Adjustment would  
8 take final action?

9 MR. RINEY: Yes. So that they knew that  
10 they were in good stead.

11 MR. NOFFSINGER: That's all I have, Mr.  
12 Riney.

13 I would like to make a statement at this  
14 time and to clarify for the record because I think Mr.  
15 Wilson alluded to what's contiguous. We alluded to  
16 that in our Staff Report in describing the  
17 neighborhood and why we made a recommendation for  
18 denial that we did.

19 We did make a finding in this case review  
20 that subject property is contiguous to an existing  
21 heavy industrial use. Meaning a legally  
22 non-conforming auto salvage yard. This property  
23 immediately adjoins the property I believe to the east  
24 and is oriented toward Old Henderson Road. So we were  
25 not speaking of the existing West Side Auto Parts

1 building at the corner of Ninth and McFarland. We're  
2 speaking of a piece of property that's addressed I  
3 believe that's 1903 Old Henderson Road.

4 The problem the Staff had in preparing the  
5 recommendation was compatibility with the  
6 neighborhood. How do we integrate this piece of  
7 property into the neighborhood and realizing that we  
8 have had a history of this type of use for a number of  
9 years within this area. Based upon the requirement of  
10 having to go before the Board of Adjustment for a  
11 Variance and a Conditional Use Permit, we had a tough  
12 time coming up with a favorable recommendation and  
13 trying to be consistent as a Planning Staff because  
14 we've addressed issues very similar to this in the  
15 past where an applicant has asked for I-2 Heavy  
16 Industrial Zoning and the buffer and Conditional use  
17 Permit or Variance was required by the Board of  
18 Adjustment. In those cases the staff has typically  
19 recommended they not be approved; however in many of  
20 those cases the applicant has been successful in  
21 achieving a zoning change as well as granting  
22 permission to operate by the Board of Adjustment. So  
23 I just wanted to clarify for the record that this  
24 property does adjoin a legally non-conforming auto  
25 salvage yard and state the basis for the Staff's

1 recommendation.

2 MR. RINEY: Mr. Chairman, just so we don't  
3 leave people here tonight with misconceptions or  
4 misunderstandings. Mr. Wilson's point about the  
5 attorney, let me clarify that. That probably falls  
6 back on me. He's correct that Mr. Myer was not going  
7 to be here. Unfortunately he was basing that on  
8 information that may have been misguided. Mr. Myer  
9 does the title work for West Side. Mr. J.D. Myer did  
10 the letter that's required on the application stating  
11 that there are no restrictions and the deed that would  
12 prohibit the use that's requested. Mr. Kamuf is the  
13 attorney that I was making reference to that  
14 represents the applicant on zoning issues. I was in  
15 Mr. Kamuf's office when he told the client that he had  
16 a conflict. I personally heard that. So that there's  
17 no misunderstanding and no mistrust from the  
18 neighborhood. It's a statement of fact.

19 CHAIRMAN: Thank you, Mr. Riney.

20 Mr. Wilson, would you want to comment?

21 MR. WILSON: Mr. Chairman, my sole comment  
22 was based on the notice that went out to the Staff  
23 that said who the attorney for the applicant was. I  
24 called him. I don't dispute anything.

25 CHAIRMAN: Thank you very much.

1                   At this time let me ask if anybody from  
2                   the commission would have any questions of Mr. Wilson  
3                   or Mr. Riney at this time.

4                   MR. APPLEBY: I've got a question for Mr.  
5                   Riney.

6                   Jim, you said that you're proposing to go  
7                   ahead and close the McFarland Avenue entrance and do  
8                   some landscaping over there. Are you proposing, do I  
9                   understand you're saying you're going to take that  
10                  access out, restore that, put that back in grass along  
11                  through there and landscape that on the McFarland  
12                  Avenue side?

13                  MR. RINEY: That is correct. Mr. McFadden  
14                  has got enough materials to do that. There will be no  
15                  vehicular gate there. It will be a solid, whatever  
16                  that metal fence is that's up there now. That will be  
17                  contiguous. The only opening would be a self-closing  
18                  pedestrian gate at the very northwest corner of the  
19                  fence. So the residents of McFarland Avenue when they  
20                  look or drive to the end of Girvin Court there onto  
21                  McFarland they will see a solid fence. They won't see  
22                  this opening into the salvage storage.

23                  MR. APPLEBY: Now, on the other side of  
24                  that where you're proposing to fence this, proposing  
25                  to take this ten foot fence all the way around the

1 perimeter of the property?

2 MR. RINEY: That's what he's got material  
3 for.

4 MR. APPLEBY: Is there room to do any  
5 screening or landscaping between the residential and  
6 the fence on say the west side of that property?

7 MR. RINEY: On the west side?

8 MR. APPLEBY: Or is it necessary? I've  
9 got a little bit of concern about this fence that's on  
10 McFarland now. The new fence looks pretty good, but  
11 there are some concerns about the maintenance of it.  
12 I mean you've got some of the bigger fencing in some  
13 other places that hasn't been too well maintained. I  
14 think somehow the neighborhood would have to have some  
15 assurance that it's not going to end up in the shape  
16 that the fence is in that exist today.

17 I've got a question for you too, Mr.  
18 Noffsinger. If by chance the board were to pass this  
19 thing with several conditions and it goes to the Board  
20 of Adjustment and they deny the variance, what is the  
21 status of the zoning at that point?

22 MR. NOFFSINGER: Well, the zoning if it  
23 passes the city commission the property would be zoned  
24 I-2 Heavy Industrial, but there would be limits that  
25 would be imposed upon the use of the property. In

1 other words, the Board of Adjustment did not approve  
2 the Conditional Use Permit and the Variance, then it  
3 could not be used for intended use; however, it could  
4 be used for light industrial activities or industrial  
5 activities that do not require the 300 foot buffer  
6 from the residential zone.

7 MR. APPLEBY: Light industrial?

8 MR. NOFFSINGER: Pretty much limited to  
9 light industrial activities.

10 MR. RINEY: Back to Mr. Appleby's point in  
11 regard to the screening, particularly on the west  
12 side. The applicant has had conversation with the  
13 property owner. I believe that's Scott Baird. They  
14 do not oppose rezoning. The fence itself, the ten  
15 foot high fence wouldn't provide screening. There is  
16 no room in there for landscape. There are some  
17 existing trees that are in there now. The fence as I  
18 understand would be constructed in the location where  
19 the existing fence is. That existing chain-link fence  
20 with those slats in it, now I'm reaching back. If  
21 memory serves me correctly, this is personal memory,  
22 was something that was installed back in the era of  
23 Green Coal Company for his facility. It probably has  
24 suffered over the years and probably hasn't had much  
25 maintenance, but one of the items on this list of 10

1 or 11 points indicates the routine maintenance of the  
2 above items to make sure that they are properly  
3 maintained. That's something we've submitted this  
4 list to the Planning Commission for review. If that  
5 needs to be entered into the record, the applicant has  
6 indicated that they're willing to do that, to put that  
7 into the record, Mr. Appleby.

8 MR. APPLEBY: Gary, can we make a  
9 recommendation on zoning with that type of stipulation  
10 or condition?

11 MR. NOFFSINGER: If you would restate the  
12 condition and stipulation. You're not speaking of  
13 this list of conditions?

14 MR. APPLEBY: He's agreeing or they're  
15 agreeing to routinely monitor the above items, but can  
16 the commission as a commission pass the zoning with  
17 that type of condition on it?

18 MR. NOFFSINGER: It's a very open ended  
19 condition.

20 MR. APPLEBY: Who is going to monitor it?

21 MR. NOFFSINGER: That's right. If we're  
22 charged with enforcing it - - it becomes difficult for  
23 us because ultimately we have to take the route of  
24 circuit court and go into court to have it monitored  
25 and then maintained. We can certainly do that. I



1 think the record of this meeting would help us in  
2 circuit court, but you might want to refer to Stewart  
3 to answer that question because he would be the one  
4 defending it in circuit court.

5 MR. ELLIOTT: It would be very difficult.  
6 You know, as time goes by say five or six years from  
7 now, who is going to be monitoring it and looking  
8 after it? Who is going to remember the minutes and  
9 the conditions that we placed on the property once  
10 it's rezoned?

11 MR. APPLEBY: What about just the property  
12 maintenance code in general that codes enforces now?  
13 Would that apply to say the maintenance of the fence?

14 MR. ELLIOTT: That would apply. I think  
15 they have a violation now that is on my desk ready for  
16 action to be taken, but they filed this rezoning, but  
17 that's the type of situation I guess Jim could  
18 probably answer that.

19 MR. NOFFSINGER: But in terms of property  
20 maintenance, our office does not enforce the property  
21 maintenance code. That's through the community  
22 development condition. It's still being enforced, but  
23 it's through a different agency.

24 SISTER VIVIAN: Does the orientation  
25 changing where the entrance is, where the property

1 base is, is that going to change the Planning Staff's  
2 recommendation? I guess where I'm coming from here is  
3 would the applicant be better off to make some of  
4 these changes that they say they're going to make and  
5 then resubmit this with the different orientation of  
6 property for us to make a decision? I'm getting  
7 really confused. There's so many conditions and  
8 there's so many proposals and changing where the  
9 entrance is.

10 MR. NOFFSINGER: Let me just state that  
11 the Planning Staff is not in a position to change  
12 their recommendation. We made that recommendation  
13 based upon our objective review of the property and  
14 the adopted Comprehensive Plan.

15 We I think adequately describe and  
16 recognize that we do have contiguous, meaning  
17 adjoining, immediately adjoining the property a  
18 legally non-conforming auto salvage yard. Our concern  
19 comes from consistency and applying this 300 foot  
20 setback from a residential zone. You know, we can't  
21 overcome that. The Staff doesn't have the ability to  
22 overcome it so we have to take position that the  
23 buffer exist. It exist for a reason. To protect  
24 those residential areas. So we can't provide a  
25 recommendation for approval.

1                   However, I will state that looking through  
2                   these conditions, which is a very detailed list of  
3                   conditions, it changes the orientation of this use.  
4                   Right now the subject property is being used we  
5                   believe, Staff contends, as an automobile salvage yard  
6                   and it's oriented toward McFarland Avenue directly in  
7                   the front door of residents owned by the opposition.  
8                   If these conditions are implemented, then it changes  
9                   the orientation of the use to Old Henderson Road.

10                   If we were speaking of Old Henderson Road  
11                   and writing the staff report on a piece of property  
12                   that fronted only Old Henderson Road, the Staff Report  
13                   might be different; however, we still have the buffer  
14                   to contend with. These conditions do change the  
15                   orientation of the property toward and it does what we  
16                   feel is in a large industrial area. You may still be  
17                   a little confused. I kind of I guess talked around  
18                   it.

19                   SISTER VIVIAN: No. I understood you.  
20                   It's like we're dealing with something different than  
21                   we thought we were coming in here dealing with.

22                   MR. NOFFSINGER: I will say this: You  
23                   have a tough decision to make and I'm glad at this  
24                   point it's not my decision.

25                   CHAIRMAN: Does anybody else from the

1 commission have any questions of the applicant?

2 MR. HAYDEN: Is there any way he could  
3 park automobiles there if we don't rezone with a fence  
4 around it?

5 CHAIRMAN: Mr. Noffsinger.

6 MR. NOFFSINGER: To continue to use the  
7 property for - -

8 MR. HAYDEN: Yes.

9 MR. NOFFSINGER: Staff alleging they are  
10 illegally using the property for the storage of  
11 dismantled or obsolete vehicles.

12 MR. HAYDEN: Dismantling.

13 MR. NOFFSINGER: Then to answer that  
14 question we would contend that he couldn't; however,  
15 that's a decision that probably is not going to be  
16 made at the staff level. It would be made at circuit  
17 court because the applicant will contest in circuit  
18 court that the use of the property has existed for a  
19 number of years and they should be allowed to  
20 continue.

21 Mr. Riney, if I've misstated anything feel  
22 free.

23 MR. RINEY: The only thing that I might  
24 add is the history that I mentioned going back to  
25 Green Coal Company and even VanOver Coal, part of the

1 reason for looking at that was because those uses I'm  
2 not sure but they may predate the zoning ordinance. I  
3 know the non-compatible use that this is contiguous  
4 with or my impression is that that was there before  
5 the zoning ordinance. There may be some issues of  
6 time as well as prolonged use.

7 CHAIRMAN: Mr. Wilson, hold on. I think  
8 we've got a question for the applicant.

9 Do you have a question?

10 MR. HAYDEN: Well, for Staff I guess.

11 It sounds like it's been used for this  
12 purpose back long before we had an ordinance on it.  
13 How come it wasn't grandfathered at that time?

14 MR. NOFFSINGER: In terms of - - when the  
15 properties were zoned back several years ago, and I'm  
16 not sure how long the B-4 zoning goes back. Gary  
17 Adams in our office might be able to give us all a  
18 history lesson in terms of what took place back in  
19 1980, but the property could have been rezoned or  
20 zoned in 1980 when we had a mass zoning within the  
21 community and was zoned B-4. The use at that time I  
22 can't speak to. It could be that the property was  
23 zoned B-4 back in 1956. That I can't answer. I do  
24 know that we've done enough research at the staff  
25 level, I'm speaking of Mr. Jim Mischel in particular,

1 to determine that a letter of violation should go out  
2 regarding the use of the property. That's not  
3 something that just happened recently. These letters  
4 have gone out many times over the course of the past  
5 several years.

6 CHAIRMAN: Mr. Wilson. Excuse me.

7 MS. DIXON: My biggest concern, and I  
8 still don't know that we've answered it, is how is it  
9 monitored? Because as long as I have been associated  
10 with either board there have been violations and  
11 attempts to monitor and attempts to correct and it has  
12 been an onward thing.

13 CHAIRMAN: Mrs. Dixon, just for the  
14 record, why don't you clarify your position when you  
15 say both boards.

16 MS. DIXON: I'm on the Board of  
17 Adjustments as well as the Planning Commission.

18 CHAIRMAN: Thank you. Mr. Wilson.

19 MR. WILSON: Mr. Chairman, if I might.  
20 Clarify one thing. The legal non-conforming use  
21 that's adjacent to this property to the east, to the  
22 Crabtree Avenue side it's a relatively small area.  
23 You know, it's abutted on the west by this property.  
24 That property it's a legal non-conforming use. It  
25 does not have residential property either across the

1 street from it nor to the west contiguous to it. To  
2 the west it's got this illegal non-conforming use to  
3 the west of it.

4 While it is used for the purpose that  
5 these people have been using this property for in  
6 recent years anyway, they've been getting notice after  
7 notice from this Staff. As Mr. Elliott stated, he has  
8 papers on his desk right now to file a lawsuit to  
9 bring it into compliance. That's merely what we're  
10 asking this commission to do. If they are successful  
11 somehow legally in showing that it's proper for them  
12 to use this in violation of the zoning ordinance, then  
13 we're looking at a different animal, but right now  
14 tonight we're here with the application that you have  
15 in front of you. You have a staff recommendation on  
16 it.

17 This talk about an entrance on Old  
18 Henderson Road is nothing we've even looked at or  
19 thought about, but we still don't like the idea of  
20 having a junk yard legalized right across from our  
21 homes. It's illegal now and we're in hopes that it  
22 will cease to be used for that. Be used for equipment  
23 sales like the sign that sits out at the entrance says  
24 it's used for.

25 So we would ask this commission to vote in

1 accordance with the recommendation of the Staff. If  
2 they wish to come back with a totally new proposal at  
3 some point in time or convince the courts when Mr.  
4 Elliott files this lawsuit that he may or may not file  
5 for you all, you know, we'll face that at that time.  
6 Right now we have this application based on what's  
7 before you all and we would ask that it be brought on  
8 for a vote and that the Staff recommendation be  
9 followed. Thank you.

10 CHAIRMAN: Thank you, Mr. Wilson.

11 Mr. Noffsinger, just for a very nice  
12 concise summary, would you summarize the terms that  
13 Mr. Wilson was using about the non-conforming and  
14 legal and illegal of the contiguous properties concise  
15 so everybody has - - I think some people probably in  
16 the audience have lost a little bit in our  
17 translation. So you can categorize properties  
18 contiguous.

19 MR. NOFFSINGER: There's an existing lot  
20 of record that is addressed as 1903 Old Henderson  
21 Road. This particular piece of property is located  
22 immediately to the east of the subject property. They  
23 share a common boundary line. During our research we  
24 find that that property is a legally non-conforming  
25 auto salvage yard. Meaning that the property is zoned



1 B-4 general business, the same as the subject property  
2 now.

3                   When we say legally non-conforming we mean  
4 the property is not zoned I-2 Heavy Industrial and  
5 does not meet all of the requirements of the zoning  
6 ordinance; however, that use predates the zoning  
7 ordinance. The date we use is April 20 something of  
8 1977. The use existed prior to that date it's  
9 considered a legally non-conforming use so long as  
10 it's not expanded, but if it occurred after that date  
11 then that occurrence should be consistent with the  
12 adopted zoning ordinance and be located in the  
13 appropriate zone.

14                   CHAIRMAN: Thank you.

15                   Are there any other questions from anyone?

16                   (NO RESPONSE)

17                   CHAIRMAN: If there are no further  
18 questions.

19                   I think what the commission is faced with  
20 is we have two different views on the situation. One  
21 is a non-conforming situation that we're faced with  
22 which we must make a decision on that's been operating  
23 in a certain manner; however, they are applying to  
24 change their zoning to conform with their business  
25 that they're trying to expand.

1                    Yet, we have the neighbors who have been,  
2                    according to some of their records and things that  
3                    they've applied to, have been good neighbors, but  
4                    would like to see the area that we're trying to vote  
5                    on to maintain the zone which they are now zoned as  
6                    and operate in that zone, is what we're faced with.  
7                    We have a Staff recommendation. As our Staff  
8                    overviewed both parties application, applied it to the  
9                    current zoning laws and then made a recommendation to  
10                    this board.

11                    So consequently that is what we, the  
12                    board, are faced with. So if the commission has any  
13                    other ideas, suggestions or questions, the Chair is  
14                    seeking that.

15                    MR. ROGERS: Mr. Noffsinger, if the  
16                    applicant resubmitted another application after all of  
17                    this was done, I would be more in favorable to it. If  
18                    we approve this, we have no idea that this will be  
19                    done that they propose to do. I think they should  
20                    come back and resubmit a new proposal. May turn it  
21                    down again, but at least if this part of it was done I  
22                    would feel better about voting in favor for it.

23                    MR. NOFFSINGER: If those conditions were  
24                    already or those items already addressed and in place,  
25                    then you would feel better about it?

1 MR. ROGERS: Right.

2 MR. APPLEBY: That presents a problem  
3 thought that they're in violation at present if I'm  
4 understanding with that paper on your desk. This  
5 needs to be resolved one way or the other.

6 MR. ELLIOTT: Right. I think Jim gave  
7 them notice of the violation like on January 24th.  
8 They have 30 days in which to take that to the Board  
9 of Adjustment and state their position before the  
10 Board of Adjustment. If the Board of Adjustment were  
11 to uphold his position, then they have 30 days to take  
12 it to circuit court. That 30 days has passed for them  
13 to take it before the Board of Adjustment.  
14 Technically they're in violation and they have not  
15 appealed that. They have no standing to object to  
16 that violation. I guess that's why we're before the  
17 zoning board.

18 DR. BOTHWELL: Mr. Chairman, I think we  
19 need to act tonight. I think it's before us. They  
20 never added the conditions before this came before us.  
21 They had ample opportunity to add that to this which  
22 wasn't done. The proposal sits here before us as is.  
23 I think we need to decide this change or not.

24 CHAIRMAN: Dr. Bothwell, the Chair will  
25 entertain a motion.

1 DR. BOTHWELL: I make a motion we deny the  
2 change based upon the Finding of the Staff.

3 MS. DIXON: I'll second it.

4 CHAIRMAN: Let's be a little bit more  
5 specific. Staff Recommendations 1 through 4?

6 DR. BOTHWELL: Yes, that's correct.

7 MS. DIXON: I'll second.

8 CHAIRMAN: We have a proposal by Dr.  
9 Bothwell for denial. We have a second by Ms. Dixon.  
10 Is there any questions?

11 (NO RESPONSE)

12 CHAIRMAN: All in favor of denial of  
13 proposal by Dr. Bothwell raise your right hand.

14 (MR. ROGERS, SISTER VIVIAN, MS. DIXON, DR.  
15 BOTHWELL RESPONDED AYE.)

16 CHAIRMAN: We've got four. Then all  
17 opposed.

18 (MR. APPLEBY, MR. GILLES AND MR. HAYDEN  
19 RESPONDED NAY.)

20 CHAIRMAN: I don't feel good about either  
21 way and I'm going to abstain.

22 MR. APPLEBY: You can't abstain. You've  
23 got to vote.

24 CHAIRMAN: It's a tough situation.  
25 Let me recall the question then. Dr.

1 Bothwell's proposal. All in favor of denial raise  
2 your right hand.

3 (MR. ROGERS, SISTER VIVIAN, MS. DIXON, DR.  
4 BOTHWELL AND MR. KIRKLAND RESPONDED AYE.)

5 CHAIRMAN: All in favor.

6 (MR. APPLEBY, MR. GILLES AND MR. HAYDEN  
7 RESPONDED NAY.)

8 CHAIRMAN: Motion is denied.

9 Next item.

10 ITEM 5

11 1501 East 26th Street, 0.660 acres  
12 Consider zoning change: From R-1C Single-Family  
13 Residential to P-1 Professional/Service  
14 Applicant: Communication Workers' of America Local  
15 3314, East Congregation of Jehovah's Witnesses

16 PLANNING STAFF RECOMMENDATIONS

17 Staff recommends approval because the proposal is  
18 in compliance with the adopted Comprehensive Plan.

19 This recommendation is made subject to the conditions  
20 and findings of fact that follow:

21 Conditions:

22 1. Access to the subject property shall be  
23 limited to the existing developed access point located  
24 on the property. No additional access points to East  
25 26th Street shall be permitted; and,

26 2. A 3-foot high continuous element and one tree  
per 40 linear feet shall be provided where the

1 vehicular use area adjoins the public right-of-way.

2 Findings of Fact:

3 1. The subject property is located in an Urban  
4 Residential Plan Area, where Professional/Service uses  
5 are appropriate in limited locations;

6 2. The subject property adjoins a  
7 Professional/Service zone to the west; and,

8 3. The applicant's proposal is a logical  
9 expansion of the P-1 Professional/Service zone that  
10 would not overburden the capacity of roadways or other  
11 urban services available in the affected area.

12 MS. WATSON: We would like to enter the  
13 Staff Report as Exhibit C.

14 CHAIRMAN: Is there anybody here  
15 representing the applicant?

16 APPLICANT: Yes.

17 CHAIRMAN: Would you like to make a  
18 statement?

19 APPLICANT: I'll answer questions if there  
20 are any.

21 CHAIRMAN: Are there any questions from  
22 anybody?

23 Yes, sir.

24 MR. ELLIOTT: State your name, please.

25 MR. FENDEL: Max Fendel.

1 (MR. MAX FENDEL SWORN BY ATTORNEY.)

2 MR. FENDEL: I own property on the corner  
3 of 26th and West Victory Court. It is a family  
4 neighborhood. The street that joins East Byers  
5 Avenue, and it's picked up quite a bit of traffic,  
6 there's only one other business in that whole area and  
7 it's out on Old Hartford Road which is a main road  
8 through that area and that's Carmel Home. I feel like  
9 zoning this one piece of property on 26th Street,  
10 which is a residential neighborhood, is a formed spot  
11 to zone. I think it's an encroachment on a family  
12 neighborhood. I would like to see this be denied.  
13 Thank you.

14 DR. BOTHWELL: Mr. Noffsinger, is this  
15 correct, that the property immediately west is also  
16 zoned B-1?

17 MR. NOFFSINGER: Yes, sir.

18 DR. BOTHWELL: Thank you.

19 CHAIRMAN: Does anybody from the  
20 commission have any questions of the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: If not the Chair will entertain  
23 a motion.

24 MR. APPLEBY: I make a motion for  
25 approval, Mr. Chairman, based on the Planning Staff's

1 Recommendations and Conditions 1 and 2 and Findings of  
2 Fact 1 through 3.

3 MR. CAMBRON: Second.

4 CHAIRMAN: We've got a proposal by Mr.  
5 Appleby for approval. We've got a second by Mr.  
6 Cambron. All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.  
9 Next item, please.

10 MR. NOFFSINGER: Mr. Chairman, let the  
11 record show that I'm disqualifying myself. I  
12 disclosed to the Planning Commission that I am a  
13 member of Bellevue Baptist Church. I have not  
14 participated in the Staff review of the proposal nor  
15 will I be participating tonight and that is due to  
16 professional ethics would not allow me to do so.

17 CHAIRMAN: Thank you, Mr. Noffsinger.  
18 Ms. Watson, do you have a report?

19 -----

20 ZONING CHANGES - COUNTY

21 ITEM 6

22 4800, 4950 KY 56, 72.074 acres  
23 Consider zoning change: From A-R Rural Agriculture  
24 and B-4 General Business to P-1 Professional/Service  
Applicant: Bellevue Baptist Church

25 PLANNING STAFF RECOMMENDATIONS



1           Staff recommends approval because the proposal is  
2           in substantial compliance with the community's  
3           Comprehensive Plan. This recommendation is made  
4           subject to the condition and findings of fact that  
5           follow:

6           Condition:

7           1. Submittal and approval of a final development  
8           plan prior to issuance of a building permit.

9           Findings of Fact:

10          1. The subject property is located in a Rural  
11          Preference Plan Area, where professional/service uses  
12          are appropriate in very-limited locations;

13          2. The Comprehensive Plan now identifies this  
14          area on the map of Sanitary Sewer Facilities Plans as  
15          planned for sanitary sewers near-term, which alters  
16          the plan area to be comparable to a Future Urban Plan  
17          Area;

18          3. The construction of the Sorgho Elementary  
19          School and the rezoning for the development of  
20          Whispering Meadows Subdivision are evidence that the  
21          plan area is in transition and has facilities planned  
22          that will support more urban development than a Rural  
23          Preference Plan Area typically has;

24          4. The applicant's proposal meets the criteria  
25          for new locations of P-1 Professional/Service uses in

1 a Future Urban Plan Area, the proposal is major-street  
2 oriented and over one acre in size; and,

3 5. The Transportation Planner has found that the  
4 location and character of the proposed access points  
5 as shown on the submitted preliminary development plan  
6 should not overburden the capacities of KY 56 and KY  
7 81.

8 MS. WATSON: We would like to enter the  
9 Staff Report as Exhibit D.

10 CHAIRMAN: Is there anybody representing  
11 the applicant here?

12 MR. PRESSER: Yes, sir, Mr. Chairman. Ron  
13 Presser.

14 (MR. RON PRESSER SWORN BY ATTORNEY.)

15 MR. PRESSER: Mr. Chairman, I'm here on  
16 behalf of Bellevue Baptist Church. There's several  
17 members of the church here as well as the engineer  
18 that's working on this project. We would be happy to  
19 answer any questions or try to respond to any concerns  
20 that anyone might have concerning this application.

21 CHAIRMAN: Thank you.

22 Is there anybody from the audience that  
23 has any questions of the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: Anybody from the commission

1 have any questions of the applicant?

2 (NO RESPONSE)

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

5 MR. HAYDEN: Make a motion to approve  
6 Findings of Fact 1 through 5 and Condition 1.

7 CHAIRMAN: We've got a motion for approval  
8 by Mr. Hayden.

9 SISTER VIVIAN: Second.

10 CHAIRMAN: Second by Sister Vivian. All  
11 in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 Related Item:

16 ITEM 6A

17 4612, 4700, 4800, 4950 KY 56, 94.575 acres  
18 Consider approval of preliminary development plan.  
19 Applicant: Bellevue Baptist Church

20 MS. WATSON: The Staff has reviewed the  
21 plan. We find it to be in order and ready for your  
22 consideration.

23 CHAIRMAN: Is there anybody here  
24 representing the applicant?

25 MR. PRESSER: Yes, sir.

CHAIRMAN: Does anybody from the audience

1 have any questions of the applicant?

2 MR. KUEGAL: Mr. Chairman, I'd like to  
3 make a statement if I could. I'm Bill Kuegal.

4 CHAIRMAN: Mr. Kuegel, would you go to the  
5 mike, please.

6 MR. ELLIOTT: State your name for the  
7 record, please.

8 MR. KUEGAL: Bill Kuegal.

9 (MR. BILL KUEGAL SWORN BY ATTORNEY.)

10 MR. KUEGAL: I've lived in this community  
11 since 1937. I have two properties that join two sides  
12 of this property and I'm not against the rezoning one  
13 minute.

14 The only thing that I would like to say to  
15 this group of church members and their leader that a  
16 rural community has some different smells sometimes.  
17 You have fresh manure that's spread sometime in the  
18 spring or during the summer. We have chemical spray  
19 that has a smell. We have dust sometimes when the  
20 land is being cultivated. We have smell when tobacco  
21 is curing. All of these have to be tolerated by the  
22 people that live in this community.

23 All I'm saying is that when church people  
24 comes out on Wednesday night for church services and  
25 you smell a particular smell, you're going to have to

1 bear with us because this is part of living in the  
2 country.

3 Certainly I think this might help us out  
4 in our community morally. We could use some help in  
5 that respect. I support 100 percent the zoning  
6 change.

7 I might say one thing to you as  
8 individuals. You make one person happy and five mad  
9 so I don't envy your position at all. Thank you

10 CHAIRMAN: Mr. Kuegal, I think you stated  
11 your position very well, but this board has always  
12 been very strongly supporting the rural community when  
13 the subdivisions and other businesses move in to the  
14 rural community.

15 Ms. Watson, I think you can state for the  
16 record the item where when a church or a subdivision  
17 moves into the rural area where we have the item that  
18 protects the rural area there. Natural habitat.

19 MS. WATSON: We have a note that we could  
20 ask them to place on the final development plan that  
21 just puts people on notice that this is an  
22 agricultural area and that affords them certain  
23 protection under the law.

24 CHAIRMAN: Okay. Thank you.

25 You all understand that and have no

1 problem with that?

2 MR. PRESSER: Yes, sir, we do understand.

3 CHAIRMAN: Did you understand what Ms.  
4 Watson had said and the notation that would be put on  
5 the plat?

6 MR. PRESSER: Yes.

7 CHAIRMAN: Thank you very much.

8 With that said are there any further  
9 questions?

10 (NO RESPONSE)

11 MR. APPLEBY: Is Chair ready for a motion?

12 CHAIRMAN: Chair is ready for a motion,  
13 Mr. Appleby.

14 MR. APPLEBY: Mr. Chairman, I make a  
15 motion for approval with the aforementioned reference  
16 to agricultural community notation on the plat.

17 MR. GILLES: Second.

18 CHAIRMAN: We've got a motion by Mr.  
19 Appleby. Second by Mr. Gilles. All in favor raise  
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 -----

24 ZONING CHANGE - CITY/COUNTY

25

1       ITEM 7

2       1809, 1819 Carter Road, 1501, 1503, 1505 Richbrooke  
Trace, 3.419 acres

3       Consider zoning change: From R-1A Single-Family  
Residential and R-3MF Multi-Family Residential to  
4       R-3MF Multi-Family Residential

5       Applicant: RNA Rental, LLC, c/o Richard N. Anderson

6       PLANNING STAFF RECOMMENDATIONS

7               Staff recommends approval because the proposal is  
8       in compliance with the community's Comprehensive Plan.

9       This recommendation is made subject to the conditions  
10      and findings of fact that follow:

11      Conditions:

12              1. Approval of a final development plan;

13              2. Existing 7-foot high stockade fence located  
14      along the east property boundary is to remain and be  
15      maintained;

16              3. Driveway access on Carter Road shall be  
17      closed when the single-family dwellings at 1809 and  
18      1819 are removed or changed in use; and,

19              4. Annexation of the unincorporated portion to  
20      allow required lot consolidation of all portions of  
21      the subject property.

22      Findings of Fact:

23              1. The subject property is located in an Urban  
24      Residential Plan Area, where urban mid-density uses  
25      are appropriate in limited locations;

1           2. Adjacent property at 2600, 2604 and 2608 West  
2 Parrish Avenue is zoned R-3MF Multi-Family  
3 Residential;

4           3. A portion of the subject property is  
5 currently zoned R-3MF and the proposal is a logical  
6 expansion of the existing R-3MF zones;

7           4. The existing buildings are designed and  
8 arranged in a manner so they will not become irritants  
9 to the neighborhood; and

10          5. Sanitary sewers serve the subject property.

11                   MS. WATSON: We would like to enter the  
12 Staff Report as Exhibit E.

13                   CHAIRMAN: Is there anybody representing  
14 the applicant?

15                   APPLICANT: I'm just here to answer any  
16 questions.

17                   CHAIRMAN: Does anybody from the audience  
18 have a question of the applicant?

19                   MR. ELLIOTT: State your name, please.

20                   MR. SHAW: Glen Shaw, 2435 North  
21 Stratford.

22                   (MR. GLEN SHAW SWORN BY ATTORNEY.)

23                   MR. SHAW: I was in the office the other  
24 day looking for the final plan of this addition and  
25 you didn't have it at that time. Do you have his



1 final plan, his final drawing now and is it available?

2 MS. WATSON: There's a final development  
3 plan - - Mr. Shaw looked at a final development plan  
4 that was submitted for consideration at this meeting  
5 at that time. We had marked up some changes on the  
6 plan and didn't have the original back at the office.  
7 Yes, it's here tonight if you would like to see that.

8 MR. SHAW: Are there any changes in the  
9 entrances and exits from the existing buildings?

10 MS. WATSON: No, sir.

11 MR. SHAW: Not no changes there. The  
12 height of the stockade fence will be specified to be  
13 maintained on the east property line?

14 MS. WATSON: Right. We ask as a condition  
15 that that 7 foot stockade fence remain be maintained.

16 MR. SHAW: I don't think we have any more  
17 problem then. Thank you.

18 CHAIRMAN: Are there any more questions?

19 (NO RESPONSE)

20 CHAIRMAN: If not the Chair is ready for a  
21 motion.

22 MR. ROGERS: Mr. Chairman, I make a motion  
23 for approval based on Staff's Recommendation with  
24 Conditions 1 through 4 and Findings of Facts 1 through  
25 5.

1 CHAIRMAN: Mr. Rogers makes a motion for  
2 approval.

3 DR. BOTHWELL: Second.

4 CHAIRMAN: Second by Dr. Bothwell. All in  
5 favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item, please.

9 RELATED ITEM:

10 ITEM 7A

11 1809, 1819 Carter Road, 1501, 1503, 1505 Richbrooke  
12 Trace, 3.419 acres

13 Consider approval of final development plan.

14 Applicant: RNA Rentals, LLC, c/o Richard Anderson

15 MR. NOFFSINGER: Mr. Chairman, this plan  
16 has been reviewed by the Planning Staff and the  
17 Engineering Staff. It's found to be in order. This  
18 plan does take some existing one bedroom units and  
19 converts them into two bedroom units with no  
20 additional building development proposed at this time.  
21 With that it's ready for your consideration.

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

24 APPLICANT: Yes.

25 CHAIRMAN: Any questions from anyone on  
the commission?

1 (NO RESPONSE)

2 CHAIRMAN: Chair is ready for a motion.

3 MS. DIXON: Move for approval.

4 CHAIRMAN: Motion for approval by Ms.

5 Dixon.

6 MR. HAYDEN: Second.

7 CHAIRMAN: Second by Mr. Hayden. All in

8 favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item.

12 -----

13 ZONING CHANGE - WHITESVILLE

14 ITEM 8

15 9923 West Street, (Whitesville) 1.01 acres  
16 Consider zoning change: From R-1A Single-Family  
17 Residential to B-4 General Business  
18 Applicant: Intersouth Construction Company, Malcolm  
19 R. Moseley, William D. Moseley, POA

18 PLANNING STAFF RECOMMENDATIONS

19 Staff recommends approval because a major  
20 physical change has occurred that is not reflected in  
21 the Land Use portion of the Comprehensive Plan. This  
22 recommendation is made subject to the conditions and  
23 findings of fact that follow:

24 Conditions:

- 25 1. No direct access to Main Street (KY 54) shall

1 be permitted;

2 2. The existing curb at the intersection of Main  
3 Street (KY 54) and West Street shall be continued  
4 along the west side of West Street for the entire  
5 length of the subject property, and,

6 3. The subject property shall be screened from  
7 the residential property to the west and to the south  
8 with a 6' high continuous element and one tree per 40  
9 linear feet of boundary.

10 Findings of Fact:

11 1. The subject property is located in an Urban  
12 Residential Plan Area, where general business uses are  
13 appropriate in very-limited locations;

14 2. There has been a major physical change in the  
15 area that is not reflected in the Land Use portion of  
16 the Comprehensive Plan with the rerouting of KY 54;

17 3. KY 54 now intersects with West Street  
18 changing the previous residential character of the  
19 area; and,

20 4. The applicant's proposal is major-street  
21 oriented and situated at the corner of intersecting  
22 streets.

23 MS. WATSON: We would like to enter the  
24 Staff Report as Exhibit F into the record.

25 CHAIRMAN: Is there anybody representing

1 the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Any questions from the staff or  
4 any questions from the commission?

5 (NO RESPONSE)

6 CHAIRMAN: Chair is ready for a motion.

7 MS. DIXON: Move for approval based upon  
8 Findings of Fact 1, 2, 3, 4 and Conditions 1 through  
9 3.

10 CHAIRMAN: Motion for approval by Ms.  
11 Dixon.

12 MR. ROGERS: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 COMBINED DEVELOPMENT PLANS/MAJOR SUBDIVISIONS

20 ITEM 9

21 Earl Hayden, Phase No. 4, Revised Lot 12, Unit 11,  
22 Heritage Park, 5.294 acres

23 Consider approval of combined major subdivision  
24 preliminary plat/final development plan.

25 Applicant: Earl Hayden

MR. NOFFSINGER: Mr. Chairman, this plat  
has been reviewed by the Planning Staff and

1 Engineering Staff. Found to be in order and ready for  
2 consideration.

3 CHAIRMAN: Is anybody here representing  
4 the applicant?

5 MR. RINEY: Jim Riney.

6 CHAIRMAN: Do you need to make a  
7 statement, Mr. Riney?

8 MR. RINEY: No.

9 CHAIRMAN: Any question from the  
10 commission?

11 (NO RESPONSE)

12 CHAIRMAN: Chair is ready for a motion.

13 MS. DIXON: Move to approve.

14 CHAIRMAN: Motion for approval by Ms.  
15 Dixon.

16 MR. HAYDEN: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 ITEM 10

23 Thorobred Crossing, 14.217 acres  
24 Consider approval of amended combined major  
25 subdivision preliminary plat/final development plan.  
Applicant: Thompson Homes, Inc.

1 MR. NOFFSINGER: Mr. Chairman, this plan  
2 has been reviewed by the Planning Staff, Engineering  
3 Staff. Found to be in order.

4 It is a revision to lot Number 3 in this  
5 development to indicate that that unit will be a  
6 single-family rear or a side load unit. It was  
7 originally stated as being a rear load unit with a  
8 garage and the access drive being located off a rear  
9 alley. They are amending that to allow for side loads  
10 so there could be a driveway on look out drive. With  
11 that it's ready for your consideration.

12 CHAIRMAN: Is there anybody here  
13 representing the applicant?

14 MR. THOMPSON: Yes.

15 CHAIRMAN: Mr. Thompson, would you like to  
16 make a statement?

17 MR. THOMPSON: Yes.

18 MR. ELLIOTT: State your name for the  
19 record.

20 MR. THOMPSON: Tommy Thompson.

21 (MR. TOMMY THOMPSON SWORN BY ATTORNEY.)

22 MR. THOMPSON: Mr. Chairman, I'm here to  
23 answer any questions that the commission or anyone may  
24 have about this application.

25 CHAIRMAN: Does anybody from the audience

1 have any questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Does anybody from the  
4 commission have any questions of the applicant?

5 (NO RESPONSE)

6 CHAIRMAN: Chair is ready for a motion.

7 MR. APPLEBY: Motion for approval.

8 CHAIRMAN: Motion for approval by Mr.  
9 Appleby.

10 MS. DIXON: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 Next item, please.

16 -----

17 DEVELOPMENT PLAN

18 ITEM 11

19 Portion 4801 Frederica Street, 11.69 acres  
20 Consider approval of final development plan.  
21 Applicant: Firststar

22 MR. NOFFSINGER: Mr. Chairman, this plan  
23 has been reviewed by the Planning Staff and  
24 Engineering Staff. Found to be in order and ready for  
25 consideration.

CHAIRMAN: Is there anybody here



1 representing the applicant?

2 MR. RINEY: Yes.

3 CHAIRMAN: Mr. Riney, do you need to make  
4 a statement?

5 MR. RINEY: No.

6 CHAIRMAN: Are there any questions of the  
7 applicant from anybody in the audience?

8 (NO RESPONSE)

9 CHAIRMAN: Anybody on the commission have  
10 any questions?

11 SISTER VIVIAN: No, but I need to abstain,  
12 excuse myself from this since I'm on the board of  
13 Firststar.

14 MR. ELLIOTT: Disqualify.

15 CHAIRMAN: Sister Vivian will disqualify  
16 herself.

17 MS. DIXON: Move to approve.

18 CHAIRMAN: Motion for approval by Ms.  
19 Dixon.

20 MR. APPLEBY: Second.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

1 ITEM 12

2 5010 Wildcat Way, 2.500 acres  
3 Consider approval of final development plan.  
4 Applicant: Esperanza, LLC, c/o Barry Schnakenburg

5 MR. NOFFSINGER: Mr. Chairman, this plan  
6 has been reviewed by the Planning Staff. Found to be  
7 in order and ready for consideration.

8 CHAIRMAN: Is there anybody here  
9 representing the applicant?

10 APPLICANT: Yes.

11 CHAIRMAN: Does anybody have any questions  
12 of the applicant? Anybody from the audience?

13 (NO RESPONSE)

14 MR. CAMBRON: Motion for approval, Mr.  
15 Chairman.

16 CHAIRMAN: Motion for approval by Mr.  
17 Cambron.

18 DR. BOTHWELL: Second.

19 CHAIRMAN: Second by Dr. Bothwell. All in  
20 favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item.

24 -----

25 MAJOR SUBDIVISIONS

ITEM 13

1 The Brooks, 31.624+ acres  
2 Consider approval of major subdivision final plat.  
3 Applicant: Owensboro Master Builders, Inc.

4 MR. NOFFSINGER: Mr. Chairman, this plat  
5 has been reviewed by the Planning Staff and  
6 Engineering Staff. Found to be in order and ready for  
7 consideration.

8 CHAIRMAN: Is anybody here representing  
9 the applicant?

10 MR. RINEY: Yes.

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

13 (NO RESPONSE)

14 CHAIRMAN: From the commission?

15 (NO RESPONSE)

16 CHAIRMAN: Chair is ready for a motion.

17 MR. HAYDEN: Make a motion for approval.

18 CHAIRMAN: Motion for approval by Mr.

19 Hayden.

20 MR. APPLEBY: Second.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 ITEM 14

Earl Hayden, Unit 1, (division of Phase No. 4, lot 12,

1 unit 11, Heritage Park Dev.) 5.294 acres  
2 Consider approval of major subdivision final plat.  
3 Surety (certified check) posted: \$25,672.50  
4 Applicant: Earl Hayden

5

6 MR. NOFFSINGER: Mr. Chairman this plat  
7 has been reviewed by the Planning Staff and  
8 Engineering Staff. Found to be in order and ready for  
9 consideration.

10 CHAIRMAN: Is somebody here representing  
11 the applicant?

12 MR. RINEY: Yes.

13 CHAIRMAN: Does anybody from the audience  
14 have a question of the applicant?

15 (NO RESPONSE)

16 CHAIRMAN: Are there any questions from  
17 the commission?

18 (NO RESPONSE)

19 MR. CAMBRON: Motion for approval.

20 CHAIRMAN: Motion for approval by Mr.  
21 Cambron.

22 MS. DIXON: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

1

2

-----  
MINOR SUBDIVISIONS

3

ITEM 15

4

1371, 1381 Gobler Ford Road, 3.98, 1.04 acres

Consider approval of minor subdivision plat.

5

Applicant: Glendial &amp; Carolyn Sue Westerfield

6

MR. NOFFSINGER: Mr. Chairman, this plat

7

has been reviewed by the Planning Staff. The plat is

8

in order; however, it does seek to create a lot that

9

does not conform to the subdivision regulations. The

10

lot will exceed the required 3 to 1 depth to width

11

ratio. I'm not sure if the applicant is represented

12

here tonight, but it is ready for your consideration.

13

CHAIRMAN: Is there anybody here

14

representing the applicant?

15

MS. WESTERFIELD: Yes.

16

CHAIRMAN: Would you like to make a

17

statement?

18

MS. WESTERFIELD: No.

19

CHAIRMAN: Does anybody from the audience

20

have a question of the applicant?

21

(NO RESPONSE)

22

CHAIRMAN: Does anybody from the

23

commission have a question of the applicant?

24

(NO RESPONSE)

25

CHAIRMAN: The Chair is now ready for

1 motion if there are no questions of the applicant.

2 SISTER VIVIAN: Motion for approval.

3 CHAIRMAN: Motion for approval by Sister  
4 Vivian.

5 MR. CAMBRON: Second.

6 CHAIRMAN: Second by Mr. Cambron. All in  
7 favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, please.

11 ITEM 16

12 10707 Red Hill-Maxwell Road, 12.000 acres  
13 Consider approval of minor subdivision plat.

14 Applicant: Samuel N. Goodall

15 MR. NOFFSINGER: Mr. Chairman, this tract  
16 was deeded back in 1985. It's deeded just after this  
17 commission began reviewing agricultural divisions. It  
18 was recently surveyed and it was sent in to our  
19 Planning Staff to approve the plat; however, I cannot  
20 sign the plat because it created an agricultural tract  
21 that did not have frontage on a public right-of-way.  
22 The only rights of ingress/egress or access was via a  
23 deeded access easement. It just so happens that all  
24 of the properties around this property have been sold  
25 off to different property owners. This tract now  
would have been created by default anyway, but at that

1 time there should have been a review by the Planning  
2 Staff to determine if it was true agricultural  
3 division or not; however, given the history of the  
4 property and size of the tract Staff has recommended  
5 you give a favorable recommendation.

6 CHAIRMAN: Is anybody here representing  
7 the applicant?

8 APPLICANT: Yes.

9 CHAIRMAN: Would you like to make a  
10 statement?

11 APPLICANT: No.

12 CHAIRMAN: Are there any questions from  
13 anybody in the audience?

14 (NO RESPONSE)

15 CHAIRMAN: Does anybody from the  
16 commission have a question?

17 (NO RESPONSE)

18 MR. APPLEBY: Motion for approval.

19 CHAIRMAN: Motion for approval by Mr.  
20 Appleby.

21 MR. GILLES: Second.

22 CHAIRMAN: Second by Mr. Gilles. All in  
23 favor raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

1 ITEM 17

2 5010 Wildcat Way, 5036 Best Way, 41.282 acres  
3 Consider approval of minor subdivision plat.  
4 Applicant: SRH Real Estate, LLC

5 MR. NOFFSINGER: Mr. Chairman, this  
6 application has been reviewed by the Planning Staff  
7 and Engineering Staff. It's found to be in order and  
8 ready for consideration.

9 CHAIRMAN: Is there anybody here  
10 representing the applicant?

11 APPLICANT: Yes.

12 CHAIRMAN: I think there will be no  
13 questions from the audience. Is there any questions  
14 from the commission?

15 (NO RESPONSE)

16 MR. CAMBRON: Motion for approval.

17 CHAIRMAN: Motion for approval by Mr.  
18 Cambron.

19 MS. DIXON: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

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25 SURETY RELEASE



1       ITEM 18

2       Premier Bandag, \$5,013.00  
3       Consider release of surety (Certified Check) for  
4       landscaping.  
5       Surety posted by: Premier Bandag

6                   MR. NOFFSINGER: Mr. Chairman, it's ready  
7       for release.

8                   CHAIRMAN: If there are no questions from  
9       anybody, the Chair is ready for a motion.

10                  MS. DIXON: Move to approve.

11                  CHAIRMAN: Motion for approval by Ms.  
12       Dixon.

13                  DR. BOTHWELL: Second.

14                  CHAIRMAN: Second by Dr. Bothwell. All in  
15       favor raise your right hand.

16                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17                  CHAIRMAN: Motion carries unanimously.

18                  -----

19                                   SURETY TRANSFERS

20       ITEM 19

21       Creek Haven, unit #1, \$10,560.00  
22       Transfer of surety (Certificate of Deposit) for  
23       sidewalks to the City of Owensboro.  
24       Surety posted by: Creek Haven Development, Inc.

25       ITEM 20

26       Creek Haven, Unit #1, \$1,400.00  
27       Transfer of surety (Certificate of Deposit) for storm  
28       sewers to the City of Owensboro  
29       Surety posted by: Creek Haven Development, Inc.

## 1 ITEM 21

2 Creek Haven, Unite #1, \$4,369.40  
3 Transfer of surety (Certificate of Deposit) for  
4 streets to the City of Owensboro.  
5 Surety posted by: Creek Haven Development, Inc.

## 6 ITEM 22

7 Doe Ridge, Unit #1, Section 3, \$26,710.80  
8 Transfer of surety (Performance Bond) for streets,  
9 sidewalks and storm sewers to the City of Owensboro.  
10 Surety posted by: Robert J. Wimsatt

## 11 ITEM 23

12 Doe Ridge, Unit #3, Section 3, \$1,350.00  
13 Transfer of surety (Performance Bond) for water mains  
14 to the City of Owensboro.  
15 Surety posted by: Robert J. Wimsatt

## 16 ITEM 24

17 Eagle Crest Estates, Unit #1, \$5,000.00  
18 Transfer of surety (Certificate of Deposit) for fire  
19 hydrants to the Daviess County Fiscal Court.  
20 Surety posted by: Hayden Park Developers

## 21 ITEM 25

22 Heritage Park, Phase 2, \$16,146.00  
23 Transfer of surety (Certificate of Deposit) for  
24 sidewalks to the City of Owensboro.  
25 Surety posted by: Jagoe Homes & Construction Co., Inc

## ITEM 26

Heritage Park, Phase 2, \$6,370.00  
Transfer of surety (Certificate of Deposit) for  
streets to the City of Owensboro  
Surety posted by: Jagoe Homes & Construction Co., Inc

## ITEM 27

Turtle Creek, Unit #2, \$2,500.00  
Transfer of surety (Performance Bond) for fire  
hydrants to the City of Owensboro.  
Surety posted by: Robert J. Wimsatt

25

1 MR. NOFFSINGER: Mr. Chairman, Surety  
2 Transfers Item 19 through 27 are in order and may be  
3 transferred in toto.

4 CHAIRMAN: If there are no questions, the  
5 Chair is ready for a motion.

6 MS. DIXON: Move to approve 19 through 27  
7 in toto.

8 CHAIRMAN: Motion for approval by Ms.  
9 Dixon.

10 SISTER VIVIAN: Second.

11 CHAIRMAN: Second by Sister Vivian. All  
12 in favor raise your right.

13 (ALL BOARD MEMBERS RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 -----

16 NEW BUSINESS

17 ITEM 28

18 2600 Block KY 81  
19 Land Acquisition  
20 Consider comments regarding the acquisition of  
21 approximately 24 acres of property on KY 81 for the  
22 Daviess County Government Complex  
23 Referred by: Daviess County Fiscal Court

24 MR. NOFFSINGER: Mr. Chairman, Mrs. Watson  
25 has a very brief description and presentation on this  
26 property.

MS. WATSON: This property is a portion of

1 an agricultural tract. There would need to be a  
2 property division created for the property. We have  
3 looked at the property in terms of flood plain. It is  
4 outside of the 100 year flood plain. We've contacted  
5 the airport regarding flight patterns from the  
6 airport. Tim Bradshaw determined that it would not  
7 interfere with flight patterns and would not be an  
8 incompatible land use to be located near the  
9 airport. He did ask that we get into the record that  
10 the requisite applications would need to be filed with  
11 the Kentucky Airport Zoning Commission prior to  
12 development of the property. The sewer facilities are  
13 being planned with RWRA for sewer extension to the  
14 site at this time.

15 CHAIRMAN: Any there any questions from  
16 the commission?

17 (NO RESPONSE)

18 CHAIRMAN: Mr. Riney.

19 MR. RINEY: I'm representing the  
20 applicant. Let me make one statement on it.

21 The 24 acres is approximate. As Ms.  
22 Watson indicated it would be subject to a lot division  
23 which the applicant has asked us to prepare. That's a  
24 soft number just for the record so everybody  
25 understands. It would depend on the depth of the

1 property as far as total acreage of the division.

2 CHAIRMAN: Thank you, Mr. Riney.

3 MR. NOFFSINGER: I would like to add for  
4 the record that Staff's review finds no conflict with  
5 the Comprehensive Plan and recommend that we forward a  
6 letter to that effect with the items that Ms. Watson  
7 indicated in that letter.

8 CHAIRMAN: Thank you very much. Added to  
9 the record.

10 The Chair is now ready for a motion.

11 MS. DIXON: Move to approve.

12 CHAIRMAN: Motion for approval by Ms.  
13 Dixon.

14 MR. HAYDEN: Second.

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 ITEM 29

20 Consider authorization of Dave Appleby, secretary for  
21 the OMPC, to endorse a check in the amount of \$630.00  
22 from JMP/Lake Forest that was mistakenly made out to  
the OMPC instead of the Daviess County Fiscal Court.

23 MR. NOFFSINGER: Mr. Chairman, I think  
24 I've made each of the commissioners aware of what has  
25 happened here and it's ready for your consideration.

1 MS. DIXON: Move to approve.

2 CHAIRMAN: Motion for approval by Ms.

3 Dixon.

4 MR. HAYDEN: Second.

5 CHAIRMAN: Second by Mr. Hayden. All in

6 favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 The Chair is ready for one more motion.

10 MS. DIXON: Move to adjourn.

11 DR. BOTHWELL: Second.

12 CHAIRMAN: All in favor raise your right

13 hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Meeting is adjourned.

16 -----

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

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 the foregoing Owensboro Metropolitan Planning & Zoning  
6 meeting was held at the time and place as stated in  
7 the caption to the foregoing proceedings; that each  
8 person commenting on issues under discussion were duly  
9 sworn before testifying; that the Board members  
10 present were as stated in the caption; that said  
11 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 86 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 4th day of April, 2002.

18  
19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 2  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
DECEMBER 19, 2002

23 COUNTY OF RESIDENCE:  
24 DAVIESS COUNTY, KENTUCKY

25