The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, August 14, 2003, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

CHAIRMAN: I would like to welcome everybody to our August 14th Owensboro Metropolitan Planning Commission meeting.

Our invocation and pledge of allegiance will be given by Mr. Nick Cambron.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Thank you, Mr. Cambron.

Our first order of business tonight will be to consider the minutes of the July 10, 2003 meeting.

Are there any additions, corrections or questions
regarding the minutes?

(NO RESPONSE)

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

MR. JAGOE: Motion for approval.

CHAIRMAN: Motion for approval.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carried unanimously.

Next item, Mr. Noffsinger.

ITEM 2

Tidemark/Accela presentation by Matt Boutcher.

MR. NOFFSINGER: Chairman, Item 2, presentation, will be postponed until the September meeting of the Planning Commission.

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PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 3

6800 Block of Thoma Drive

Land Acquisition

Consider comments regarding the acceptance of a 16-foot wide portion of Thoma Drive beginning at Oak Drive and ending at a dead end for a distance of 305 feet into the county road system for maintenance.

Referred by: Daviess County Fiscal Court
MR. NOFFSINGER: Mr. Chairman, Planning Staff reviewed this applications. We find no conflict with the Comprehensive Plan. Recommend you forward a letter to that effect to the Daviess County Fiscal Court.

CHAIRMAN: Is there anybody here representing Fiscal Court?

(NO RESPONSE)

CHAIRMAN: Does anybody from the audience have any questions?

(NO RESPONSE)

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

MR. HAYDEN: Make motion to approve.

MR. CAMBRON: Second.

CHAIRMAN: Motion by Mr. Hayden for approval. Second by Mr. Cambron for approval. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGES - COUNTY

ITEM 4

5023 Free Silver Road, 44.0 acres
Consider zoning change: From EX-1 Coal Mining and A-U Urban Agriculture to A-U Urban Agriculture.
Applicant: Joseph F. Edge, et al, c/o Dorothy M.
MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan. Findings of fact in support of this recommendation include:

1. The subject property is located in a Rural Community Plan Area, where agricultural uses are appropriate in general locations;

2. Coal mining activities have ceased on the subject property;

3. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires property to revert to its original zoning classification when mining is completed;

and,

4. The tract is large enough to support agricultural production under appropriate farming practices that conserve topsoil.

MS. STONE: We'd like to enter the Staff Report as Exhibit A.

CHAIRMAN: Is there anybody here representing the applicant?
APPLICANT REP: Yes.

CHAIRMAN: Does anybody in the audience have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Commission have a question of the applicant?

(NO RESPONSE)

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

MR. HAYDEN: Make a motion to approve for Finding of Facts 1 through 4.

CHAIRMAN: Motion for approval by Mr. Hayden.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 5

10867 Hamilton Road, 70.0 acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agriculture.
Applicant: Jerry L. & Janice L. Roberts

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive
Plan. Findings of fact in support of this recommendation include:

1. The subject property is located in a Rural Maintenance Plan Area, where rural farm residential uses are appropriate in general locations;

2. The subject property has frontage on a public road and no new roads or streets are proposed;

3. Mining activities on the subject property have ceased; and,

4. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires that property shall revert to its original zoning classification after mining.

MS. STONE: This Staff report will be Exhibit B.

CHAIRMEN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMEN: Does anybody in the audience have a question?

(NO RESPONSE)

CHAIRMEN: Does anybody on the Commission have a question?

(NO RESPONSE)

CHAIRMEN: If not, the Chair is ready for a motion.
SISTER VIVIAN: Motion for approval, based on Findings of Fact 1 through 4.

CHAIRMAN: Motion for approval by Sister Vivian.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Thank you.

ITEM 6

6315-6671 Horrell Road, 34.4 acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agriculture.
Applicant: Charles J. & Linda Kamuf

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan. Findings of fact in support of this recommendation include:

1. The subject property is located in a Rural Maintenance Plan Area, where rural large-lot residential uses are appropriate in limited locations;

2. Each lot will have frontage on Horrell Road and no new streets will be created;

3. Mining activities have ceased on the subject
4. The Owensboro Metropolitan Zoning ordinance, Article 12a.31 requires that the property shall revert to its original zoning classification after mining.

MS. STONE: This is Exhibit C.

CHAIRMAN: Is there someone here representing the applicant?

APPLICANT REP: Charles Kamuf, ready to answer any questions.

CHAIRMAN: Thank you, Mr. Kamuf.

Does anybody have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Commission have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: The Chair is ready for a motion, Mr. Cambron.

MR. CAMBRON: Motion for approve, Mr. Chairman, based on the Findings of Fact 1 through 4.

CHAIRMAN: Motion for approval, Mr. Cambron.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 7

4901, 5001 Block Lee Rudy Road, 34.357 acres
Consider zoning change: From A-U Urban Agriculture
to R-1B Single-Family Residence.
Applicant: Jagoe Land Corporation, Sara Jane McNulty

MR. JAGOE: Mr. Chairman, I need to
disqualify myself from Items 7 and 7a.

MR. CHAIRMAN: Please note Mr. Jagoe is
disqualifying himself from 7 and 7a.

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is
in compliance with the community's adopted Comprehensive
Plan. Finding of fact in support of this recommendation
include:

1. The subject property is located in a Future
Urban Plan, where urban low-density residential uses are
appropriate in very limited locations;

2. The subject property adjoins existing R-1B
Single-Family Residential zoning to the east, and is
therefore a logical expansion of R-1B zoning;

3. The applicant has submitted a preliminary
subdivision plat proposing lots that will create housing
densities that are consistent with the character of
streets and urban services in the adjacent residential
subdivision; and

4. Sanitary sewer is available to the subject property.

MS. STONE: This is Exhibit D.

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: I'm Michael Taylor with Jagoe Land. I'm also here with Don Bryant, Bryant Engineering. Here to answer any questions you may have.

CHAIRMAN: Thank you.

Does anybody from the audience have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody from the Commission have a question of the applicant?

MR. GILLES: Mr. Chairman, I'd like at this time, there's nobody here a representative from this community. They asked me to put a word in on Items 7 to 7a.

No one in the community was opposed to this development. They would like to mention that it is encroaching on more rural agriculture area. Different odors, different activities take place. Didn't know if that could be included in a plat or deed somehow. I know in the past it has happened. I don't know where that was
included at, how that was included in there.

CHAIRMAN: Mr. Gilles, it is definitely part of the record now, but we may ask Mr. Elliott if he'll comment on that.

MR. ELLIOTT: I'm not sure. Gary, what do we --

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

CHAIRMAN: Yes.

MR. NOFFSINGER: Typically, when we have a preliminary subdivision plat that is located in areas that contain agricultural uses, we have placed notations on the plat. Becky Stone has some language that we typically use when requested. She might want to read that into the record and see if that particular language is acceptable to the landowner, Jagoe Homes.

MS. STONE: Typically, we would have the property noted with a note that states this subdivision is located within an area that contains a variety of agricultural activities under Kentucky Law, KRS 413.072, agricultural and civil-cultural operations enjoy certain protections from non-agricultural land uses. This notation shall carry forward on all property plats and deeds for the properties showing hereon.

CHAIRMAN: Thank you, Ms. Stone.
MR. NOFFSINGER: To clarify that would be a notation applied to all plats on the property, as well as the deeds to the property.

MR. TAYLOR: That'll be fine.

MR. ELLIOTT: I need to swear you in.

(MR. MICHAEL TAYLOR SWORN BY ATTORNEY.)

CHAIRMAN: Would you just repeat your comment for the record, please?

MR. TAYLOR: That's acceptable to us.

CHAIRMAN: Thank you.

Mr. Gilles, does that adequate cover your concerns?

MR. GILLES: I think so.

CHAIRMAN: Thank you very much.

If there are no further questions or comments, the Chair is now ready for a motion.

DR. BOTHWELL: Mr. Chairman, I make a motion for approval based on the Findings of Fact 1 through 4, and then also the addition of the agricultural as read by Becky.

CHAIRMAN: Okay. Dr. Bothwell has a motion for approval.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE,
WITH THE DISQUALIFICATION OF MR. JAGOE.)

CHAIRMAN: Motion carries unanimously. Thank
you.

RELATED ITEM 7A

Graystone Estates, 34.357 acres
Consider approval of major subdivision preliminary
plat.
Applicant: Jagoe Land Corporation

MR. NOFFSINGER: Mr. Chairman, this plat has
been reviewed by the Planning Staff and the Engineering
Staff. Has found to be in order, and we would recommend
that it be approved with the condition of the notation
regarding agricultural uses within the area that was just
read into the record be included on the plat and all
subsequent plats.

CHAIRMAN: Any questions from the audience?
(NO RESPONSE)

CHAIRMAN: Questions or comments from the
Commission?

MR. CAMBRON: I have a quick question. This
will have to be directed to the engineer that, I guess,
that drew this up here. So, if he could step up.

MR. ELLIOTT: State your name, please.

MR. BRYANT: Don Bryant.

(MR. DON BRYANT SWORN BY ATTORNEY.)
MR. CAMBRON: Mr. Bryant, I was just looking here, and all the drainage has been taken care of in this situation here to accommodate all these houses that are going to be built in this area?

MR. BRYANT: Yes. We've expanded the retention area. All the water from the side is routed through the retention area.

MR. CAMBRON: In the front, in the detention in the front? Is that what you're speaking of?

MR. BRYANT: On Lee Rudy Road?

MR. CAMBRON: Yes. Yes.

MR. BRYANT: Existing retention area has been expanded approximately three acres.

MR. CAMBRON: Okay. Who maintains that?

MR. BRYANT: The lots actually extend into the basin and its ownership by the various lots that back up to the basin. So, it's individual ownership.

MR. CAMBRON: Thank you.

Mr. Noffsinger, how does that work out? If somebody's not taking care of that area there, how is that taken care of?

MR. NOFFSINGER: In this scenario, it sounds like it's up to the property owners, and depend on a deed of dedication. Contains language in terms of the maintenance, future maintenance of that drainage area.
Generally, there's a drainage easement. A Homeowners Association is responsible for maintaining that, or in some cases, for example, projects that are annexed into the City of Owensboro. The City of Owensboro has been taking those over for maintenance.

MR. APPLEBY: There's a city ordinance that requires the property be maintained. If these people own it and they don't maintain it, the City can mow it and bill them for it. Isn't that right?

MR. NOFFSINGER: May very well be the case, but I don't know. Is annexation planned within this development?

MR. BRYANT: I don't believe it can be annexed. The existing city doesn't allow for that. But I understand talking to Mike that it's going to be provision in the Homeowner's Association, the way that's set up --

MR. CAMBRON: For maintenance?

MR. BRYANT: That they will -- if there is a problem, then they would have responsibility secondary to the property owners that actually -- that would be entitled to the property owners.

MR. CAMBRON: Okay.

MR. BRYANT: So, that would be their responsibility to follow up.
MR. CAMBRON: That's fine. That's the question I wanted answered.

CHAIRMAN: Are there any other questions or comments from the Commission?

MR. GILLES: Mr. Bryant, this detention basin, is it -- when you design a detention basin, is it, and all the water is coming off this future development, how big of a rain do you take into account there?

MR. BRYANT: The actual basin is designed for a 100-year return. Directing storm water from the storm sewer system is designed for 10-year, with the main structures on the two large -- there's two water sheds coming to the pipe that crosses Lee Rudy Road. Little over 400 acres total coming to that point.

Those two main arteries or structures on those are designed for 25-year return periods. The collector system is 10-year. But drainage of the retention basin is designed for 100 years, but we also run calculations for 2 through 100 years. It all different return periods. Just to make sure that it's working properly for any event. So, we basically cover all potential events.

Actually, this basin actually improves the downstream drainage conditions below Lee Rudy Road over
what exists today.

MR. GILLES: That's all.

CHAIRMAN: Are there any further questions by the Commission?

MR. APPLEBY: Is Chair ready for a motion?

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

MR. APPLEBY: Motion for approval.

MR. CAMBRON: Second.

CHAIRMAN: Motion for approval by Mr. Appleby. Second by Mr. Cambron. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE, WITH THE DISQUALIFICATION OF MR. JAGOE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

4560 Millers Mill Road, 8.376 acres
Consider zoning change: From A-U Urban Agriculture to R-1C Single-Family Residence.
Applicant: Pagan Enterprises, Inc.

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan. This recommendation is made subject to the conditions and findings of fact that follow:
CONDITIONS:

1. Access shall be limited to one access point on Millers Mill Road in alignment with existing Water Wheel Way. No lots shall have direct access to Millers Mill Road. Access shall be limited to Water Wheel Way and the internal streets.

2. A reservation of a strip of land for a period of two years from the date of approval of the preliminary plat for the planned Outer Boulevard shall be provided that properly aligns to the south and north and is a minimum of 80 feet wide.

FINDINGS OF FACT:

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

2. The subject property adjoins urban low-density residential zoning and uses to the east, south, and north;

3. Sanitary sewer is available to the subject property; and,

4. A preliminary subdivision plat has been submitted that reserves a strip of land for a period of two years to provide for the planned Outer Boulevard.

MS. STONE: This is Exhibit E.

CHAIRMAN: Is there anybody here representing
the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody in the audience have a question of the applicant?

MR. McLEMORE: Yes.

CHAIRMAN: Yes, sir. Please step forward to the podium.

MR. McLEMORE: My name is O. C. Mc Lemore and -

CHAIRMAN: Just a moment, sir.

MR. ELLIOTT: State your full name, sir.

MR. McLEMORE: O. C. Mc Lemore.

(MR. O. C. McLEMORE SWORN BY ATTORNEY.)

MR. McLEMORE: I'm here on behalf of at least my neighbor here, Ken Ackerman. There's some concern on the strip that's the old Owensboro-Philpot Road, the railroad. There's 60 feet that was given back to the original, to the owners. In the plot plan that you have, I think that that's the old drawing. It doesn't show the 30 feet extended onto each of the lots of the adjoining. Could anybody address that?

MR. RINEY: Yes, sir.

MR. ELLIOTT: State your name, please.

MR. RINEY: Jim Riney.

(MR. JIM RINEY SWORN BY ATTORNEY.)
MR. RINEY: We understood there was some comments received by the planning office earlier today. We made some attempts to contact some of the people that had called. Did not know to contact Mr. Ackerman or Mr. McLemore. But what we understand, there's some confusion, and rightly so.

There was an old railroad bed that had existed between what is now Steeplechase subdivision, which is what these gentlemen were speaking of, and where Mr. Pagan has purchased the property from a Ken Wedding. That old railroad right-of-way was abandoned years ago, offered for sale by the railroad to the adjoining property owners, and subsequently purchased under quick-claim deed by the predecessor entitled to Mr. Pagan by Mr. Ken Wedding.

That property was, old railroad right-of-way was 66 feet wide. Now, we did the survey work, design and so forth for the Steeplechase Subdivision and took into account the railroad right-of-way that existed at that point in time. We did the survey and design work for the RWRA sewer line extension that consumes this 66 foot wide strip at a public facilities easement and took that railroad right-of-way and the property line of Steeplechase into consideration at that time.

And subsequently, we have done the survey and
design work for Tanglewood Subdivision, which is before you tonight, and again, have taken the boundary into consideration of the Steeplechase boundary, the railroad right-of-way, and the additional property.

There was and is a quick-claim deed for the old railroad. When that railroad property came to become sewer easement, then – Mr. Kamuf is here tonight – Mr. Kamuf, Charlie Kamuf, representing RWRA, prepared some deeds of easement. And because it was an old railroad right-of-way and the title that they gave was a quick-claim deed and not a general warranty deed, then Mr. Kamuf chose to protect the interest of his client by preparing quick-claim deeds for both Mr. Wedding, who actually received the deed from the railroad, as well as all the adjoining property owners up and down this full corner. From all the way back to beyond Fairview Drive, all the way to Millers Mill Road. That was for the sake of his clients so he could err on the side of safety if some issue on title came up later on.

Now, somewhere in this quick-claim process, someone has gotten or given the impression that possibly the Steeplechase property owners and residents had acquired half of that right-of-way.

Mr. Kamuf is here tonight to testify to you as to what instrument he did prepare, and to testify to
you what that instrument did do, and probably to testify that it did not convey any additional property or property rights to the adjoining property owner.

But, we would be glad to show the individuals the deeds we, as of today, went back over to the courthouse, repeated our research on adjoining deeds. I have copies that are fresh from today of all the adjoining lots that conveyed from Steeplechase, along with the deeds that Mr. Kamuf prepared that branded quick-claim easement for RWRA sewer from those adjoining property owners. Some of those adjoining property owners still own the property; some don't.

It's a little confusing if you haven't dealt with it, but the bottom line is that the original subdivision line for Steeplechase has been honored. There has been no addition to those lots by any of this railroad quick-claim activity and the folks there still own what they have been deeded, and no additional deeds have been prepared by Mr. Kamuf to convey any additional portion of that strip to the Steeplechase property owners.

So, Mr. Kamuf, I don't know if you want to add anything.

MR. McLEMORE: Thank you. I have a deed --

CHAIRMAN: Make sure you step up to the
podium there.

MR. McLEMORE: I have a copy of Mr. Ackerman's deed that does join this railroad bed. And I believe, if you all will read this, it says that he owns that, or at least we were given that impression.

CHAIRMAN: Let's ask Mr. -- Mr. Riney, do you want to address that or do you want Mr. Kamuf?

MR. McLEMORE: Why's the need to do this?

MR. RINEY: First of all, maybe let's ask Mr. McLemore to read into the record the deed book page that he's making reference to so that we have that in the record.

MR. McLEMORE: Okay. The book is 649 and the page is 351, as far as recorded deed. It's Number 07340, the 22nd day of March, 1995.

MR. RINEY: That is a deed of easement --

MR. KAMUF: I might explain --

MR. ELLIOTT: State your name, please.

MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: Do you all understand what the issue is? The issue is the old track, that old railroad bed was abandoned. The question is is who owned it. There was a quick-claim deed given by the railroad to Mr. Pagan's predecessor in title, Kenny Wedding.
So, the question then comes as to who does RWRA get a deed from for a permanent easement of sewer through the old railroad bed. And what this is, in 649, Page 351 is a deed of easement where we received -- for an example, this one here is Kenny's. This is Kenny Ackerman's deed, where Mr. Ackerman and his wife, Charlene, gave RWRA an easement if they had it by a quick-claim easement whatever interest that they would have so we could put that sewer line through the old railroad bed.

But it was a deed of easement that was transferred to us by Mr. Ackerman.

Here's a copy of it, Stewart.

If somebody has a question, you all are welcome to look at it. You understand? It's just the opposite. We receive from maybe six property owners, and one of them would be Thompson Homes, who then had several lots that fronted along the old railroad bed.

So, we came to them and asked them for a deed of easement. So, this document that we're talking about at 649, at 351 at the top says: Deed of easement from the Ackermans to RWRA, and it's for the purpose of a fervent and perpetual easement. It gives a description of that old road bed. Whatever right, title and interest that they would have, they allowed us to go through and
put that, the sewer line through there. So, that is a
deed of easement; it's not a deed where -- but it was a
deed by the landowner to us.

CHAIRMAN: Thank you, Mr. Kamuf.

MR. ACKERMAN: Can I ask a question?

CHAIRMAN: Yes, sir. But you need to come to
the podium and be sworn in.

MR. ELLIOTT: State your name, please.

MR. ACKERMAN: Ken Ackerman.

(MR. KEN ACKERMAN SWORN BY ATTORNEY.)

MR. ACKERMAN: My question is: Why, if we
don't own the property, would the County come to us and
ask us for easement?

MR. KAMUF: Okay. I think I can answer that.

Several of these cases have gone up to the
Court of Appeals. I've taken one up in one case, and one
up in another case. There's some question as to when
that railroad bed went through there, as to whether when
the train, when the railroad abandoned it or sold it, the
question then comes up as to who owned it.

So, for me to protect everybody, I got Mr.
Pagan's predecessor and title to give me an easement, and
then I've got the landowner who adjoined it to give me an
easement. I'm not saying who owns it, I'm just saying
that's the reason I did that. Do you understand, Ken?
MR. ACKERMAN: So who does own it?

MR. KAMUF: I didn't run the title. I got
the easement from everybody on both sides, including the
person or the entity that purchased the right-of-way from
the railroad.

CHAIRMAN: Just a moment. While Mr. Kamuf is
at the podium, Mr. Cambron has a question.

MR. CAMBRO: Go ahead, Mr. Jagoe. Do you
have a question?

MR. JAGOE: I guess this might be a question
of counsel, and I'm not sure whether you would answer or
not. If the applicant has filed that they own the
property, and if it was ever found, in fact, that they
did not own the property, would the zoning, if we zoned
it then, would it be invalid?

MR. ELLIOTT: No. The zoning would not be
invalid, no.

MR. JAGOE: So, we would be zoning somebody
else's property that didn't file?

MR. ELLIOTT: Yes, that's correct. But I
think the remedy would be back against Riney will certify
this is a property and boundary line, and Mr. Kamuf is
saying that, you know, this plat is correct.

MR. KAMUF: Wait a minute. Mr. Kamuf didn't
say the plat was correct.
MR. ELLIOTT: Well, you indicated that your
client has the deed.

MR. KAMUF: All I said was that the RWRA has
purchased an easement from the adjoining property owner
as well as from the person who purchased the quick-claim
easement from the railroad. You understand? I got
easement from everybody involved so if there was any
question, I know we got a right to put the permanent
perpetual sewer line through there.

MR. JAGOE: That answers my first question.

My second question: Is it within the power
of this Commission to determine ownership of property?

MR. ELLIOTT: No.

MR. JAGOE: Thank you.

MR. ACKERMAN: Is there anybody on the
Commission who will read this?

MR. CAMBRON: Well, we could. But, you know,
we don't have any judgement on that one way or another.

CHAIRMAN: Dr. Bothwell, did you have a
question?

DR. BOTHWELL: That was my question is that
we're not in power to -- that's for the courts, not for
us to decide who or what, where.

MR. CAMBRON: I want to make a comment here,
too, is that, you know, I don't feel comfortable as a
Planning Commission member making any judgement on this property, because I'm not sure who owns the property.
And in your plat, Mr. Pagan, I presume -- or Mr. Riney. You all are showing that you all own that, is it 60 foot or 30 foot --

MR. RINEY: Thirty-three foot on each side.

MR. CAMBRON: You all are showing that you all acquire or own that property, correct, in this plat?

MR. RINEY: That plat -- technically, what my partner, who is also a licensed surveyor, certified that. But at any rate, that's showing that there's a deed on record for a railroad convey that to Mr. Pagan's predecessor.

MR. CAMBRON: I don't feel comfortable making a judgement call on this because I don't know who owns the property. I don't know who we need to be dealing with on that particular item there.

MR. JAGOE: Mr. Cambron, how would we know what ownership of any zoning --

MR. CAMBRON: How would we know?

MR. JAGOE: Yes.

MR. CAMBRON: We don't most of the time, but we assume that the attorney and the engineer, if they're handling it, have done a deed research.

CHAIRMAN: Mr. Appleby?
MR. APPLEBY: That's what we're assuming in every case. Really, the only authority we've got, as I understand it, is to review this plat for its compliance with Comprehensive Plans where zoning is concerned, and whether or not it meets the requirements of a preliminary subdivision plan. That's our only authority, if I understand it correctly. We can't make a new determination on the property ownership. That's all we're voting on.

MR. CAMBRON: But in this situation, it has been brought up to us, and even one of the counsel there can't make sure who owns the property.

CHAIRMAN: Let me see if I can summarize this and clear this up for all parties involved. Let me first ask Mr. Noffsinger.

Mr. Noffsinger, this Commission is totally responsible for making a zoning ruling. As far as a property dispute between two landowners, that does not come under our jurisdiction. Is that correct?

MR. NOFFSINGER: That is correct.

CHAIRMAN: So, as the applicant making the — this Commission could go ahead and either approve it or disapprove it, and any other ownership issues will be resolved by the court.

MR. NOFFSINGER: That is correct.
MR. ELLIOTT: I will agree with that.

CHAIRMAN: Okay. Mr. Elliott, you agree with that. All right.

Mr. Kamuf, Mr. Riney and our two property owners, we are only going to be voting on what is involved in a zoning change. If there's any problems with the ownership or anything along those lines, then that needs to be determined in a court of law.

Now, Mr. Riney, are you going to make it even clearer?

MR. RINEY: I'm going to attempt to. I will say one thing. The determination of ownership is strictly for the purview of the court.

MR. CAMBRON: Sure.

MR. RINEY: A licensed surveyor can't do that. Property owner can't do that. An attorney can't do that. All of those folks can offer evidence, but it's up to the man in the robe and that jury to make that determination. So, we agreed on that.

Secondly, I'm hoping this may help, but the information that we received late today indicated that some of the folks were under the impression that they owned half this right-of-way, this 33 feet because of an instrument that Mr. Kamuf drafted and that they signed. The purpose of having Mr. Kamuf here tonight was to
convey to you that the instrument he prepared and that
they signed was merely an easement. It was not a
conveyance to them; it was an easement from them.

    So, if that's the basis for their concern,
and we certainly hope for these people, because if it was
my property, I'd have a concern. But if that's the basis
of their concern that the instrument that Mr. Kamuf
prepared conveys something to them, then Mr. Kamuf is
here to clarify that.

    CHAIRMAN: Thank you.

    MR. JAGOE: I have a question.

    Mr. Riney, they did that by quick-claim. So
that even though they -- with a quick-claim, they
conveyed an easement of something which they may not have
owned or may own?

    MR. RINEY: That's correct. If Mr. Kamuf, if
I understand the situation, was doing the best job he
could for his client, RWRA, and whichever circumstances
ended up, then Mr. Kamuf had RWRA's best interest in
hand.

    MR. JAGOE: Thank you.

    CHAIRMAN: Now, do the property owners, do
you understand your situation with this Commission on
this item?

    MR. McLEMORE: Somewhat. But I need to say
CHAIRMAN: Well, step to the podium.

MR. McLEMORE: I think the concern here is it's going to be a nice subdivision. But what I am here to -- as we put certain items in on the blueprints as they did for Steeplechase, certain items, I think there are people in Steeplechase that adjoined this railroad, our concern of losing our trees.

Now, we would like to have some consideration there as far as there's trees on both sides of the railroad.

CHAIRMAN: Now, this is an item I think we can get clarification for you.

Mr. Riney, do you want to address this?

Mr. Kamuf?

MR. KAMUF: I met with Mr. Pagan. There was an issue that I understand from the Planning Staff that was an issue, that Mr. Pagan does not intend to remove any trees along that right-of-way. I'll have Mr. Pagan come and put it in the record if you'd like.

CHAIRMAN: I think we'd like to do that.

MR. APPLEBY: Well, one point, though, that needs to be made. Once those lots are sold and if the property does, indeed, belong to them, that property owner would have the right to remove what he wanted to,
couldn't he? I don't think we're going to put that in the deed.

MR. JAGOE: One other follow-up question that --

MR. KAMUF: Yes. That's probably true, Mr. Appleby. In other words, to protect, if you wanted to do that and protect that property owner, probably only way you could do that is to put it in the deed itself when Mr. Pagan sold the lot that there would be some type of restriction or covenant that would be placed in the deed saying that that property owner would not remove those trees to the roots. I think you're right.

But we're willing to agree to that. You understand?

CHAIRMAN: Okay.

MR. KAMUF: I think if you want the man protected -- you might ask Stewart, but if you want that landowner protected, you probably want to go a step further.

CHAIRMAN: Stewart?

MR. ELLIOTT: I don't know if we can go that far or not. I just don't think we can do that.

MR. KAMUF: But we are willing to agree that we will not remove any of the trees to the rear in that easement that they're talking about.
Mr. Pagan's here to testify.

CHAIRMAN: Okay. Stewart?

MR. ELLIOTT: I don't think that we can do that or we should do that.

CHAIRMAN: Okay. Mr. Pagan, we will excuse you then.

MR. JAGOE: Just a point. Was Mr. Kamuf speaking for Mr. Pagan or RWRA?

CHAIRMAN: That's a good point.

MR. KAMUF: Oh, I'm not up here tonight for RWRA in any way.

MR. JAGOE: Okay. Doesn't RWRA have the easement across this property?

MR. KAMUF: They have the easement through the railroad bed itself.

MR. JAGOE: But not up adjacent to the property lines?

MR. KAMUF: I don't think so. Sewers been in five or six years.

MR. JAGOE: I understand, but work happens in easements and so forth. So, I just --

MR. KAMUF: I don't any idea what RWRA's plans are other than what's been done already.

MR. JAGOE: Okay.

MR. ELLIOTT: State your name, please.
MR. PAGAN: Phillip Pagan.

(MR. PHILLIP PAGAN SWORN BY ATTORNEY.)

CHAIRMAN: Does anybody have any questions of Mr. Pagan?

MR. PAGAN: In regard to trees is what this fellow were to know about. If you know me, I like trees. And one of the first instructions I gave Jim Riney when he started developing, no trees come down except where the street goes. And the rest of them will -- so, you know, definitely on the side of Steeplechase, I have no plans to take any out. On this side, there'll be none taken up, unless it interferes with getting some storm sewers or something, you know, down through there. I don't know -- but there'll be no trees taken out, at least large trees, that's not necessary. And I will probably have that in -- I have it in my current deed of restrictions in Stonegate and I'll have it in this that no trees will be taken out, unless it's, you know, necessary for the whole building.

CHAIRMAN: Thank you, Mr. Pagan.

MR. JAGOE: Chair ready for a motion?

CHAIRMAN: The Chair is ready for a motion, Mr. Jagoe.

MR. JAGOE: The first thing I'd like to say is the only way to protect the tree is to own it. With
that, I would make a motion for approval, based on Conditions 1 and 2, and Findings of Fact 1 through 4.

CHAIRMAN: We got a motion for approval by Mr. Jagoe.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Thank you.

RELATED ITEM 8A

Tanglewood Park, 8.376 acres
Consider approval of major subdivision preliminary plat.
Applicant: Pagan Enterprises, Inc.

MR. NOFFSINGER: Mr. Chairman, this plan has been viewed by the Planning Staff, Engineering Staff. Has found to be in order and ready for consideration.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Commission have any questions?
MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

ITEM 9

2000 E. Parrish Avenue, 7.047 acres
Consider zoning change: From A-U Urban Agriculture to P-1 Professional/Service.
Applicant: Southern Star Central, Daviess County Fiscal Court

PLANNING STAFF RECOMMENDATIONS

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

CONDITION:

1. Access shall be limited to one access point on East Parrish Avenue. The existing access point shall be reconstructed and relocated to align with Windhaven Drive.

FINDINGS OF FACT:

1. The subject property is located in a
Professional/Service Plan Area, where professional/service uses are appropriate in general locations;

2. The subject property adjoins P-1 zoning and uses to the west; and,

3. Limited expansions of existing non-residential uses should be accommodated.

MS. STONE: This is Exhibit F.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have a question?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Commission have a question?

MR. CAMBRON: Is Chair ready for a motion?

CHAIRMAN: The Chair is ready for a motion, Mr. Cambron.

MR. CAMBRON: Motion for approval based on Condition 1 and Findings of Facts 1 through 3.

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

CHAIRMAN: Ms. Dixon, is that a second?
MS. DIXON: Yes.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

COMBINED DEVELOPMENT PLANS/MAJOR SUBDIVISIONS

ITEM 10

Heartland, Phase II, Lots 313-503, 45.145 acres
Consider approval of amended combined major subdivision preliminary plat/final development plan.
Applicant: Jagoe Development Corporation

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

MR. JAGOE: Mr. Chairman, I need to disqualify myself.

CHAIRMAN: Mr. Jagoe has disqualified himself.

Is there anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Any questions in the audience of the applicant?

(NO RESPONSE)
CHAIRMAN: Any questions on the Commission of
the applicant?

(NO RESPONSE)

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

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

MR. APPLEBY: Second.

CHAIRMAN: All in favor -- we have a second,
Mr. Appleby. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE,
WITH THE DISQUALIFICATION OF MR. JAGOE.)

CHAIRMAN: Motion carries unanimously. Thank
you.

ITEM 11

2200 East Parrish Avenue, The Springs, 20.66 acres
Consider approval of revised combined major
subdivision preliminary plat/final development
plan.

Applicant: Malcolm Bryant Corporation

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

CHAIRMAN: Is there anybody here representing
the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody in the audience have
a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Commission have a question of the applicant?

(NO RESPONSE)

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

MS. DIXON: Move for approval.

CHAIRMAN: Motion for approval, Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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MAJOR SUBDIVISIONS

ITEM 12

523, 529, 535, 541, 547 Worthington Road, 4310, 4412, 4448, 4472, 4496, 4520, 4560 Lee Rudy Road, 9.236 acres
Consider approval of major subdivision preliminary plat.
Applicant: JED Rentals Family Partnership

MR. NOFFSINGER: Mr. Chairman, this plan has been reviewed by the Planning Staff and Engineering Staff. It's found to be in order and ready for consideration.
CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Got any questions for the applicant?

(NO RESPONSE)

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

MR. GILLES: Mr. Chairman, is it possible to make a motion that the -- add that same language that we did to the other property on Lee Rudy Road?

CHAIRMAN: Yes, sir. I believe -- well, let me ask Ms. Stone if that language is already in there.

MS. STONE: The agricultural note?

CHAIRMAN: Yes, ma'am.

MS. STONE: It's not on that plat. You want to add that note also?

CHAIRMAN: I believe Mr. Gilles would like --

MR. GILLES: I'd like to put that in the form of a motion.

MR. JAGOE: What language are we talking about?
MR. NOFFSINGER: Point of clarification

before you add language to the plat and commit what this
language being included in the deed. Someone needs to
represent the applicant. Would be agreeable to that.

CHAIRMAN: Mr. Bryant?

MR. BRYANT: I don't know --

MR. ELLIOTT: State your name.

MR. BRYANT: Don Bryant. I don't think

there's any problem with this at all. I really cannot
commit with the owner if we approve it for this note with
the language subject to this note being approved by the
owner be a qualifier. I would like to run it by the
owner. We didn't anticipate this, but I could have had
someone from, you know, representing the owner here. I
don't anticipate any problems whatsoever.

CHAIRMAN: Mr. Bryant, based on your request,

I'll let Mr. Noffsinger, for the record, comment to that
effect.

MR. NOFFSINGER: I believe we can do that.

We just wouldn't decide the plat unless the owner
committed to that notation.

MR. BRYANT: I can verify that in the
morning.

MR. NOFFSINGER: I would certainly feel more
comfortable. That way the applicant is agreeable or
they're not agreeable to sign the plat.

CHAIRMAN: Mr. Gilles, is that --

MR. GILLES: Yes.

CHAIRMAN: Okay. Now, no questions, no further comments, Chair is ready for a motion.

MR. CAMBRON: Motion for approval, sir.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. GILLES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 13

523, 529, 535, 541, 547 Worthington Road, 4310, 4412, 4448, 4472, 4496, 4520, 4560 Lee Rudy Road, 9.236 acres

Consider approval of major subdivision final plat. Surety (Performance Bond) posted: $92,992.00 and (Certified Check) posted: $3,896.00

Applicant: JED Rentals Family Partnership

MR. NOFFSINGER: Mr. Chairman, this plat's been reviewed by the Planning Staff. Found to be in order. I think you would want to add that note regarding agricultural activities adjoining that property. That would carry over on all plats and deeds related to this property to be subject to the applicant's approval of
that language on the plat.

CHAIRMAN: And Mr. Bryant, who represents this also?

MR. NOFFSINGER: Yes.

CHAIRMAN: Mr. Bryant, is that okay on this parcel?

MR. BRYANT: That is satisfactory.

CHAIRMAN: Okay.

MR. JAGOE: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. JAGOE: Move for approval.

CHAIRMAN: Motion for approval by Mr. Jagoe.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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MINOR SUBDIVISION

ITEM 14

8750, 8756 Mulligan Road, 2.831, 1.975 acres
Consider approval of minor subdivision plat.
Applicant: Gene Mitchell

MR. NOFFSINGER: Mr. Chairman, this plat comes before the Planning Commission. It's found to be
in order and is ready for consideration. It involves two existing lots of record. When we reconfigure the property as proposed by the applicant, one of the lots would exceed the depth to width ratio. However, the two lots exist today. We're not creating any additional lots. We're just reconfiguring the lots, and we'd recommend you approve.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Are there any questions or comments for the Commission?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

SURETY RELEASES
ITEM 15
Carpets Unlimited Addition, $3,000.00
Consider release of surety (Irrevocable Letter of Credit) for landscaping.
Surety posted by: Carpets Unlimited

ITEM 16
Comfort Suites, $13,000.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: D.F. Crane Construction Corp.

ITEM 17
Dawson Memorial Baptist Church, $802.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Dawson Memorial Church

ITEM 18
Ernie Mac's Used Cars, $1,935.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: R.L. Wilson Masonry, Inc.

ITEM 19
Heritage Park, Unit #3, $6,440.00
Consider release of surety (Certificate of Deposit) for 1" Bit. Conc. Surface.
Surety posted by: Jagoe Homes and Construction LLC

ITEM 20
Sts. Joseph & Paul Parking Lot, $4,284.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Sts. Joseph & Paul Parish

ITEM 21
Wyndall's Foodland (Villa Point), $17,730.00
Consider release of surety (Irrevocable Letter of Credit) for landscaping.
Surety posted by: Wyndall's Enterprises, Inc.
MR. NOFFSINGER: Mr. Chairman, Surety Releases titled 15 through 21 are in order and may be released in toto with --

MR. JAGOE: The exception of Number 19. I need to disqualify myself.

CHAIRMAN: Mark the record, Mr. Jagoe is disqualifying himself on Item 19.

If there are no question, comments, Chair is ready for a motion.

DR. BOTHWELL: Motion for approval.

SISTER VIVIAN: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE, WITH THE DISQUALIFICATION OF MR. JAGOE ON ITEM 19.)

CHAIRMAN: Motion carries unanimously.

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SURETY TRANSFERS

ITEM 22

Eagles Nest At Eagle Crest Estates, $20,004.00 Transfer of surety (Certificate of Deposit) for sidewalks and streets to the Daviess County Fiscal Court.
Surety posted by: Hayden Park Developers

ITEM 23

Eagle Nest At Eagle Crest Estates, $8,349.60 Transfer of surety (Certificate of Deposit) for streets to the Daviess County Fiscal Court.
Surety posted by: Hayden Park Developers
ITEM 24

Heritage Park, Unit #3, $16,038.00
Transfer of surety (Certificate of Deposit) for
sidewalks to the City of Owensboro.
Surety posted by: Jagoe Homes and Construction
Co., Inc.

MR. NOFFSINGER: Mr. Chairman, Surety
Transfers, Items 22 through 24 are in order and ready for
transfer, with --

MR. JAGOE: The exception of 24. I need to
disqualify myself.

CHAIRMAN: Mark the record, Mr. Jagoe will be
disqualifying as to Item 24.

If there are no questions --

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr.

Appleby.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE,
WITH THE DISQUALIFICATION OF MR. JAGOE ON ITEM 24.)

CHAIRMAN: Motion carries unanimously.

Chair is ready for one final motion.

DR. BOTHWELL: Motion to adjourn.

CHAIRMAN: Motion to adjourn by Dr. Bothwell.
MR. GILLES: Second.

CHAIRMAN: Second by Mr. Gilles. All in favor?

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We're adjourned.

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STATE OF KENTUCKY

)        SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS)

I, SARA WILSON, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 50 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 4th day of September, 2003.

_____________________________
SARA WILSON, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
JUNE 10, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY