

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 AUGUST 14, 2003

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

- 9 MEMBERS PRESENT: Drew Kirkland, Chairman
- 10 Gary Noffsinger
- 11 Dave Appleby
- 12 Jimmy Gilles
- 13 Scott Jagoe
- 14 Sister Vivian Bowles
- 15 Nick Cambron
- 16 Judy Dixon
- 17 Dr. Mark Bothwell
- 18 Martin Hayden
- 19 Stewart Elliott, Attorney

20 \* \* \* \* \*

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

24 Our invocation and pledge of allegiance will  
25 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

1 regarding the minutes?

2 (NO RESPONSE)

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

5 MR. JAGOE: Motion for approval.

6 CHAIRMAN: Motion for approval.

7 MS. DIXON: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carried unanimously.

12 Next item, Mr. Noffsinger.

13 ITEM 2

14 Tidemark/Accela presentation by Matt Boutcher.

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

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19 PUBLIC FACILITIES PLANS  
20 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

21 ITEM 3

22 6800 Block of Thoma Drive  
23 Land Acquisition  
24 Consider comments regarding the acceptance of a 16-  
25 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

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

5 CHAIRMAN: Is there anybody here representing  
6 Fiscal Court?

7 (NO RESPONSE)

8 CHAIRMAN: Does anybody from the audience  
9 have any questions?

10 (NO RESPONSE)

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

13 MR. HAYDEN: Make motion to approve.

14 MR. CAMBRON: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 -----

22 ZONING CHANGES - COUNTY

23 ITEM 4

24 5023 Free Silver Road, 44.0 acres  
25 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.

1 Morris

2 MR. ELLIOTT: State your name, please.

3 MS. STONE: Becky Stone.

4 (MS. BECKY STONE SWORN BY ATTORNEY.)

5 PLANNING STAFF RECOMMENDATIONS

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

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

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

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

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

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

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

1 APPLICANT REP: Yes.

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

4 (NO RESPONSE)

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

7 (NO RESPONSE)

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

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

12 CHAIRMAN: Motion for approval by Mr. Hayden.

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 Next item, please.

19 ITEM 5

20 10867 Hamilton Road, 70.0 acres  
21 Consider zoning change: From EX-1 Coal Mining to  
22 A-R Rural Agriculture.  
Applicant: Jerry L. & Janice L. Roberts

23 PLANNING STAFF RECOMMENDATIONS

24 Staff recommends approval because the proposal is  
25 in compliance with the community's adopted Comprehensive

1 Plan. Findings of fact in support of this recommendation  
2 include:

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

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

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

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

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

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

17 (NO RESPONSE)

18 CHAIRMAN: Does anybody in the audience have  
19 a question?

20 (NO RESPONSE)

21 CHAIRMAN: Does anybody on the Commission  
22 have a question?

23 (NO RESPONSE)

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

1                   SISTER VIVIAN: Motion for approval, based on  
2 Findings of Fact 1 through 4.

3                   CHAIRMAN: Motion for approval by Sister  
4 Vivian.

5                   MR. HAYDEN: Second.

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

8                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9                   CHAIRMAN: Motion carries unanimously. Thank  
10 you.

11                  ITEM 6

12                  6315-6671 Horrell Road, 34.4 acres  
13                  Consider zoning change: From EX-1 Coal Mining to  
14                  A-R Rural Agriculture.  
15                  Applicant: Charles J. & Linda Kamuf

16                  PLANNING STAFF RECOMMENDATIONS

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

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

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

                  3. Mining activities have ceased on the subject

1 property; and,

2 4. The Owensboro Metropolitan Zoning ordinance,  
3 Article 12a.31 requires that the property shall revert to  
4 its original zoning classification after mining.

5 MS. STONE: This is Exhibit C.

6 CHAIRMAN: Is there someone here representing  
7 the applicant?

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

10 CHAIRMAN: Thank you, Mr. Kamuf.

11 Does anybody have a question of the  
12 applicant?

13 (NO RESPONSE)

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

16 (NO RESPONSE)

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

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

21 CHAIRMAN: Motion for approval, Mr. Cambron.

22 MR. APPLEBY: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)



1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 ITEM 7

4 4901, 5001 Block Lee Rudy Road, 34.357 acres  
5 Consider zoning change: From A-U Urban Agriculture  
6 to R-1B Single-Family Residence.  
Applicant: Jagoe Land Corporation, Sara Jane  
McNulty

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

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

11 PLANNING STAFF RECOMMENDATIONS

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

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

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

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

1 subdivision; and

2 4. Sanitary sewer is available to the subject  
3 property.

4 MS. STONE: This is Exhibit D.

5 CHAIRMAN: Is there anybody here representing  
6 the applicant?

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

10 CHAIRMAN: Thank you.

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

13 (NO RESPONSE)

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

16 MR. GILLES: Mr. Chairman, I'd like at this  
17 time, there's nobody here a representative from this  
18 community. They asked me to put a word in on Items 7 to  
19 7a.

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

1 included at, how that was included in there.

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

5 MR. ELLIOTT: I'm not sure. Gary, what do we  
6 - -

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

9 CHAIRMAN: Yes.

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

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

25 CHAIRMAN: Thank you, Ms. Stone.

1                   MR. NOFFSINGER: To clarify that would be a  
2 notation applied to all plats on the property, as well as  
3 the deeds to the property.

4                   MR. TAYLOR: That'll be fine.

5                   MR. ELLIOTT: I need to swear you in.

6                   (MR. MICHAEL TAYLOR SWORN BY ATTORNEY.)

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

9                   MR. TAYLOR: That's acceptable to us.

10                  CHAIRMAN: Thank you.

11                  Mr. Gilles, does that adequate cover your  
12 concerns?

13                  MR. GILLES: I think so.

14                  CHAIRMAN: Thank you very much.

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

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

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

23                  MS. DIXON: Second.

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

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

3 CHAIRMAN: Motion carries unanimously. Thank  
4 you.

5 RELATED ITEM 7A

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

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

17 CHAIRMAN: Any questions from the audience?

18 (NO RESPONSE)

19 CHAIRMAN: Questions or comments from the  
20 Commission?

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

24 MR. ELLIOTT: State your name, please.

25 MR. BRYANT: Don Bryant.

(MR. DON BRYANT SWORN BY ATTORNEY.)

1                   MR. CAMBRON: Mr. Bryant, I was just looking  
2 here, and all the drainage has been taken care of in this  
3 situation here to accommodate all these houses that are  
4 going to be built in this area?

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

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

10                  MR. BRYANT: On Lee Rudy Road?

11                  MR. CAMBRON: Yes. Yes.

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

14                  MR. CAMBRON: Okay. Who maintains that?

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

18                  MR. CAMBRON: Thank you.

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

22                  MR. NOFFSINGER: In this scenario, it sounds  
23 like it's up to the property owners, and depend on a deed  
24 of dedication. Contains language in terms of the  
25 maintenance, future maintenance of that drainage area.

1 Generally, there's a drainage easement. A Homeowners  
2 Association is responsible for maintaining that, or in  
3 some cases, for example, projects that are annexed into  
4 the City of Owensboro. The City of Owensboro has been  
5 taking those over for maintenance.

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

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

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

18 MR. CAMBRON: For maintenance?

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

23 MR. CAMBRON: Okay.

24 MR. BRYANT: So, that would be their  
25 responsibility to follow up.

1                   MR. CAMBRON: That's fine. That's the  
2 question I wanted answered.

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

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

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

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

24                  Actually, this basin actually improves the  
25 downstream drainage conditions below Lee Rudy Road over



1 what exists today.

2 MR. GILLES: That's all.

3 CHAIRMAN: Are there any further questions by  
4 the Commission?

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

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

8 MR. APPLEBY: Motion for approval.

9 MR. CAMBRON: Second.

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

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

15 CHAIRMAN: Motion carries unanimously.

16 Next item, please.

17 ITEM 8

18 4560 Millers Mill Road, 8.376 acres  
19 Consider zoning change: From A-U Urban Agriculture  
20 to R-1C Single-Family Residence.  
Applicant: Pagan Enterprises, Inc.

21 PLANNING STAFF RECOMMENDATIONS

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

## 1           CONDITIONS:

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

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

## 12           FINDINGS OF FACT:

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

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

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

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

24                   MS. STONE: This is Exhibit E.

25                   CHAIRMAN: Is there anybody here representing

1 the applicant?

2 APPLICANT REP: Yes.

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

5 MR. McLEMORE: Yes.

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

8 MR. McLEMORE: My name is O. C. McLemore and  
9 - -

10 CHAIRMAN: Just a moment, sir.

11 MR. ELLIOTT: State your full name, sir.

12 MR. McLEMORE: O. C. McLemore.

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

14 MR. McLEMORE: I'm here on behalf of at least  
15 my neighbor here, Ken Ackerman. There's some concern on  
16 the strip that's the old Owensboro-Philpot Road, the  
17 railroad. There's 60 feet that was given back to the  
18 original, to the owners. In the plot plan that you have,  
19 I think that that's the old drawing. It doesn't show the  
20 30 feet extended onto each of the lots of the adjoinment.  
21 Could anybody address that?

22 MR. RINEY: Yes, sir.

23 MR. ELLIOTT: State your name, please.

24 MR. RINEY: Jim Riney.

25 (MR. JIM RINEY SWORN BY ATTORNEY.)

1                   MR. RINEY: We understood there was some  
2                   comments received by the planning office earlier today.  
3                   We made some attempts to contact some of the people that  
4                   had called. Did not know to contact Mr. Ackerman or Mr.  
5                   McLemore. But what we understand, there's some  
6                   confusion, and rightly so.

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

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

25                  And subsequently, we have done the survey and

1 design work for Tanglewood Subdivision, which is before  
2 you tonight, and again, have taken the boundary into  
3 consideration of the Steeplechase boundary, the railroad  
4 right-of-way, and the additional property.

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

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

24           Mr. Kamuf is here tonight to testify to you  
25 as to what instrument he did prepare, and to testify to

1 you what that instrument did do, and probably to testify  
2 that it did not convey any additional property or  
3 property rights to the adjoining property owner.

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

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

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

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

25 CHAIRMAN: Make sure you step up to the

1 podium there.

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

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

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

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

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

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

17 MR. KAMUF: I might explain - -

18 MR. ELLIOTT: State your name, please.

19 MR. KAMUF: Charles Kamuf.

20 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

21 MR. KAMUF: Do you all understand what the  
22 issue is? The issue is the old track, that old railroad  
23 bed was abandoned. The question is is who owned it.  
24 There was a quick-claim deed given by the railroad to Mr.  
25 Pagan's predecessor in title, Kenny Wedding.

1                   So, the question then comes as to who does  
2     RWRA get a deed from for a permanent easement of sewer  
3     through the old railroad bed. And what this is, in 649,  
4     Page 351 is a deed of easement where we received - - for  
5     an example, this one here is Kenny's. This is Kenny  
6     Ackerman's deed, where Mr. Ackerman and his wife,  
7     Charlene, gave RWRA an easement if they had it by a  
8     quick-claim easement whatever interest that they would  
9     have so we could put that sewer line through the old  
10    railroad bed.

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

13                   Here's a copy of it, Stewart.

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

19                   So, we came to them and asked them for a deed  
20    of easement. So, this document that we're talking about  
21    at 649, at 351 at the top says: Deed of easement from  
22    the Ackermans to RWRA, and it's for the purpose of a  
23    fervent and perpetual easement. It gives a description  
24    of that old road bed. Whatever right, title and interest  
25    that they would have, they allowed us to go through and



1 put that, the sewer line through there. So, that is a  
2 deed of easement; it's not a deed where - - but it was a  
3 deed by the landowner to us.

4 CHAIRMAN: Thank you, Mr. Kamuf.

5 MR. ACKERMAN: Can I ask a question?

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

8 MR. ELLIOTT: State your name, please.

9 MR. ACKERMAN: Ken Ackerman.

10 (MR. KEN ACKERMAN SWORN BY ATTORNEY.)

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

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

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

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

1 MR. ACKERMAN: So who does own it?

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

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

8 MR. CAMBRON: Go ahead, Mr. Jagoe. Do you  
9 have a question?

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

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

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

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

24 MR. KAMUF: Wait a minute. Mr. Kamuf didn't  
25 say the plat was correct.

1                   MR. ELLIOTT: Well, you indicated that your  
2 client has the deed.

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

10                  MR. JAGOE: That answers my first question.

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

13                  MR. ELLIOTT: No.

14                  MR. JAGOE: Thank you.

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

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

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

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

24                  MR. CAMBRON: I want to make a comment here,  
25 too, is that, you know, I don't feel comfortable as a

1 Planning Commission member making any judgement on this  
2 property, because I'm not sure who owns the property.  
3 And in your plat, Mr. Pagan, I presume - - or Mr. Riney.  
4 You all are showing that you all own that, is it 60 foot  
5 or 30 foot - -

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

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

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

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

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

20 MR. CAMBRON: How would we know?

21 MR. JAGOE: Yes.

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

25 CHAIRMAN: Mr. Appleby?

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

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

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

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

20                   MR. NOFFSINGER: That is correct.

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

25                   MR. NOFFSINGER: That is correct.

1 MR. ELLIOTT: I will agree with that.

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

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

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

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

14 MR. CAMBRON: Sure.

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

20 Secondly, I'm hoping this may help, but the  
21 information that we received late today indicated that  
22 some of the folks were under the impression that they  
23 owned half this right-of-way, this 33 feet because of an  
24 instrument that Mr. Kamuf drafted and that they signed.  
25 The purpose of having Mr. Kamuf here tonight was to

1 convey to you that the instrument he prepared and that  
2 they signed was merely an easement. It was not a  
3 conveyance to them; it was an easement from them.

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

10 CHAIRMAN: Thank you.

11 MR. JAGOE: I have a question.

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

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

21 MR. JAGOE: Thank you.

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

25 MR. McLEMORE: Somewhat. But I need to say

1 something.

2 CHAIRMAN: Well, step to the podium.

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

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

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

14 Mr. Riney, do you want to address this?

15 Mr. Kamuf?

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

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

22 MR. APPLEBY: Well, one point, though, that  
23 needs to be made. Once those lots are sold and if the  
24 property does, indeed, belong to them, that property  
25 owner would have the right to remove what he wanted to,



1       couldn't he? I don't think we're going to put that in  
2       the deed.

3                       MR. JAGOE: One other follow-up question that  
4       - -

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

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

15                      CHAIRMAN: Okay.

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

20                      CHAIRMAN: Stewart?

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

23                      MR. KAMUF: But we are willing to agree that  
24      we will not remove any of the trees to the rear in that  
25      easement that they're talking about.

1 Mr. Pagan's here to testify.

2 CHAIRMAN: Okay. Stewart?

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

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

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

9 CHAIRMAN: That's a good point.

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

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

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

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

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

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

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

24 MR. JAGOE: Okay.

25 MR. ELLIOTT: State your name, please.

1 MR. PAGAN: Phillip Pagan.

2 (MR. PHILLIP PAGAN SWORN BY ATTORNEY.)

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

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

20 CHAIRMAN: Thank you, Mr. Pagan.

21 MR. JAGOE: Chair ready for a motion?

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

24 MR. JAGOE: The first thing I'd like to say  
25 is the only way to protect the tree is to own it. With

1 that, I would make a motion for approval, based on  
2 Conditions 1 and 2, and Findings of Fact 1 through 4.

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

5 DR. BOTHWELL: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously. Thank  
10 you.

11 RELATED ITEM 8A

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

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

19 CHAIRMAN: Is there anybody here representing  
20 the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Does anybody in the audience have  
23 any questions?

24 (NO RESPONSE)

25 CHAIRMAN: Does anybody on the Commission  
have any questions?

1 MR. CAMBRON: Motion for approval.

2 CHAIRMAN: Motion for approval by Mr.

3 Cambron.

4 MR. APPLEBY: Second.

5 CHAIRMAN: Second by Mr. Appleby. All in

6 favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously. Next

9 item, please.

10 ITEM 9

11 2000 E. Parrish Avenue, 7.047 acres  
12 Consider zoning change: From A-U Urban Agriculture  
13 to P-1 Professional/Service.  
14 Applicant: Southern Star Central, Daviess County  
15 Fiscal Court

16 PLANNING STAFF RECOMMENDATIONS

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

21 CONDITION:

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

26 FINDINGS OF FACT:

27 1. The subject property is located in a

1 Professional/Service Plan Area, where  
2 professional/service uses are appropriate in general  
3 locations;

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

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

8 MS. STONE: This is Exhibit F.

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

11 (NO RESPONSE)

12 CHAIRMAN: Does anybody in the audience have  
13 a question?

14 (NO RESPONSE)

15 CHAIRMAN: Does anybody on the Commission  
16 have a question?

17 MR. CAMBRON: Is Chair ready for a motion?

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

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

22 CHAIRMAN: Motion for approval by Mr.  
23 Cambron.

24 MS. DIXON: Second.

25 CHAIRMAN: Ms. Dixon, is that a second?

1 MS. DIXON: Yes.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries unanimously.

6 Next item.

7 -----

8 COMBINED DEVELOPMENT PLANS/MAJOR SUBDIVISIONS

9 ITEM 10

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

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

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

20 CHAIRMAN: Mr. Jagoe has disqualified  
21 himself.

22 Is there anybody here representing the  
23 applicant?

24 APPLICANT REP: Yes.

25 CHAIRMAN: Any questions in the audience of  
the applicant?

(NO RESPONSE)

1                   CHAIRMAN: Any questions on the Commission of  
2 the applicant?

3                   (NO RESPONSE)

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

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

8                   MR. APPLEBY: Second.

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

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

13                   CHAIRMAN: Motion carries unanimously. Thank  
14 you.

15                   ITEM 11

16                   2200 East Parrish Avenue, The Springs, 20.66 acres  
17                   Consider approval of revised combined major  
18                   subdivision preliminary plat/final development  
19                   plan.  
20                   Applicant: Malcolm Bryant Corporation

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

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

26                   APPLICANT REP: Yes.

27                   CHAIRMAN: Does anybody in the audience have



1 a question of the applicant?

2 (NO RESPONSE)

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

5 (NO RESPONSE)

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

8 MS. DIXON: Move for approval.

9 CHAIRMAN: Motion for approval, Ms. Dixon.

10 MR. HAYDEN: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 -----

16 MAJOR SUBDIVISIONS

17 ITEM 12

18 523, 529, 535, 541, 547 Worthington Road, 4310,  
19 4412, 4448, 4472, 4496, 4520, 4560 Lee Rudy Road,  
9.236 acres

20 Consider approval of major subdivision preliminary  
plat.

21 Applicant: JED Rentals Family Partnership

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

1                   CHAIRMAN:  Is anybody here representing the  
2   applicant?

3                   APPLICANT REP:  Yes.

4                   CHAIRMAN:  Got any questions for the  
5   applicant?

6                   (NO RESPONSE)

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

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

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

14                  Ms. Stone, would you step to the podium,  
15   please.

16                  MS. STONE:  The agricultural note?

17                  CHAIRMAN:  Yes, ma'am.

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

20                  CHAIRMAN:  I believe Mr. Gilles would like -  
21   -

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

24                  MR. JAGOE:  What language are we talking  
25   about?

1                   MR. NOFFSINGER: Point of clarification  
2 before you add language to the plat and commit what this  
3 language being included in the deed. Someone needs to  
4 represent the applicant. Would be agreeable to that.

5                   CHAIRMAN: Mr. Bryant?

6                   MR. BRYANT: I don't know - -

7                   MR. ELLIOTT: State your name.

8                   MR. BRYANT: Don Bryant. I don't think  
9 there's any problem with this at all. I really cannot  
10 commit with the owner if we approve it for this note with  
11 the language subject to this note being approved by the  
12 owner be a qualifier. I would like to run it by the  
13 owner. We didn't anticipate this, but I could have had  
14 someone from, you know, representing the owner here. I  
15 don't anticipate any problems whatsoever.

16                   CHAIRMAN: Mr. Bryant, based on your request,  
17 I'll let Mr. Noffsinger, for the record, comment to that  
18 effect.

19                   MR. NOFFSINGER: I believe we can do that.  
20 We just wouldn't decide the plat unless the owner  
21 committed to that notation.

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

24                   MR. NOFFSINGER: I would certainly feel more  
25 comfortable. That way the applicant is agreeable or

1 they're not agreeable to sign the plat.

2 CHAIRMAN: Mr. Gilles, is that - -

3 MR. GILLES: Yes.

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

6 MR. CAMBRON: Motion for approval, sir.

7 CHAIRMAN: Motion for approval by Mr.  
8 Cambron.

9 MR. GILLES: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 ITEM 13

16 523, 529, 535, 541, 547 Worthington Road, 4310,  
17 4412, 4448, 4472, 4496, 4520, 4560 Lee Rudy Road,  
18 9.236 acres

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

22 Applicant: JED Rentals Family Partnership

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

1 that language on the plat.

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

4 MR. NOFFSINGER: Yes.

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

7 MR. BRYANT: That is satisfactory.

8 CHAIRMAN: Okay.

9 MR. JAGOE: Is Chair ready for a motion?

10 CHAIRMAN: Chair is ready for a motion.

11 MR. JAGOE: Move for approval.

12 CHAIRMAN: Motion for approval by Mr. Jagoe.

13 MR. CAMBRON: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item, please.

19 -----

20 MINOR SUBDIVISION

21 ITEM 14

22 8750, 8756 Mulligan Road, 2.831, 1.975 acres  
23 Consider approval of minor subdivision plat.  
24 Applicant: Gene Mitchell

25 MR. NOFFSINGER: Mr. Chairman, this plat  
comes before the Planning Commission. It's found to be

1 in order and is ready for consideration. It involves two  
2 existing lots of record. When we reconfigure the  
3 property as proposed by the applicant, one of the lots  
4 would exceed the depth to width ratio. However, the two  
5 lots exist today. We're not creating any additional  
6 lots. We're just reconfiguring the lots, and we'd  
7 recommend you approve.

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

10 (NO RESPONSE)

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

13 (NO RESPONSE)

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

16 MR. APPLEBY: Motion for approval.

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

19 MR. JAGOE: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 -----

25 SURETY RELEASES

## 1           ITEM 15

2           Carpets Unlimited Addition, \$3,000.00  
3           Consider release of surety (Irrevocable Letter of  
4           Credit) for landscaping.  
5           Surety posted by: Carpets Unlimited

## 6           ITEM 16

7           Comfort Suites, \$13,000.00  
8           Consider release of surety (Performance Bond) for  
9           landscaping.  
10          Surety posted by: D.F. Crane Construction Corp.

## 11          ITEM 17

12          Dawson Memorial Baptist Church, \$802.00  
13          Consider release of surety (Certified Check) for  
14          landscaping.  
15          Surety posted by: Dawson Memorial Church

## 16          ITEM 18

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

## 21          ITEM 19

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

## 26          ITEM 20

27          Sts. Joseph & Paul Parking Lot, \$4,284.00  
28          Consider release of surety (Certified Check) for  
29          landscaping.  
30          Surety posted by: Sts. Joseph & Paul Parish

## 31          ITEM 21

32          Wyndall's Foodland (Villa Point), \$17,730.00  
33          Consider release of surety (Irrevocable Letter of  
34          Credit) for landscaping.  
35          Surety posted by: Wyndall's Enterprises, Inc.

1 MR. NOFFSINGER: Mr. Chairman, Surety  
2 Releases titled 15 through 21 are in order and may be  
3 released in toto with - -

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

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

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

10 DR. BOTHWELL: Motion for approval.

11 SISTER VIVIAN: Second.

12 CHAIRMAN: All in favor raise your right  
13 hand.

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

16 CHAIRMAN: Motion carries unanimously.

17 -----

18 SURETY TRANSFERS

19 ITEM 22

20 Eagles Nest At Eagle Crest Estates, \$20,004.00  
21 Transfer of surety (Certificate of Deposit) for  
22 sidewalks and streets to the Daviess County Fiscal  
23 Court.

24 Surety posted by: Hayden Park Developers

25 ITEM 23

26 Eagle Nest At Eagle Crest Estates, \$8,349.60  
27 Transfer of surety (Certificate of Deposit) for  
28 streets to the Daviess County Fiscal Court.

29 Surety posted by: Hayden Park Developers



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ITEM 24

2

Heritage Park, Unit #3, \$16,038.00

3

Transfer of surety (Certificate of Deposit) for  
sidewalks to the City of Owensboro.

4

Surety posted by: Jagoe Homes and Construction  
Co., Inc.

5

6

MR. NOFFSINGER: Mr. Chairman, Surety

7

Transfers, Items 22 through 24 are in order and ready for

8

transfer, with - -

9

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

10

disqualify myself.

11

CHAIRMAN: Mark the record, Mr. Jagoe will be

12

disqualifying as to Item 24.

13

If there are no questions - -

14

MR. APPLEBY: Motion for approval.

15

CHAIRMAN: Motion for approval by Mr.

16

Appleby.

17

DR. BOTHWELL: Second.

18

CHAIRMAN: Second by Dr. Bothwell. All in

19

favor raise your right hand.

20

(ALL BOARD MEMBERS PRESENT RESPONDED AYE,

21

WITH THE DISQUALIFICATION OF MR. JAGOE ON ITEM 24.)

22

CHAIRMAN: Motion carries unanimously.

23

Chair is ready for one final motion.

24

DR. BOTHWELL: Motion to adjourn.

25

CHAIRMAN: Motion to adjourn by Dr. Bothwell.

1 MR. GILLES: Second.

2 CHAIRMAN: Second by Mr. Gilles. All in

3 favor?

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: We're adjourned.

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

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

15 WITNESS my hand and notarial seal on this the  
16 4th day of September, 2003.

17

18

19 \_\_\_\_\_  
20 SARA WILSON, NOTARY PUBLIC  
21 OHIO VALLEY REPORTING SERVICE  
22 202 WEST THIRD STREET, SUITE 12  
23 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
23 JUNE 10, 2006

24 COUNTY OF RESIDENCE:  
25 DAVIESS COUNTY, KENTUCKY