The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, September 11, 2003, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

CHAIRMAN: Want to welcome everybody to the September 11th meeting of the Owensboro Metropolitan Planning and Zoning Commission. I invite you to stand as we give our invocation and pledge of allegiance.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first order of business is to consider the minutes of the August 14, 2003 meeting. Are there any corrections, additions to the
minutes?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

We have a presentation. Gary, would you give us an update on our presentation and tell us what we're to expect.

MR. NOFFSINGER: We're going to have about a 15 minute presentation by Matt Bouthcer. Matt is our computer program analyst. Matt has been the program manager on a project that we've been working on. It's called a Wireless Inspector. It's the product that's provided by Accela is the company. Anyhow, it enables our inspectors, building and electrical inspectors to go out in the field and communicate with our data base as well as to communicate with contractors via e-mail system.

He's also going to be going through our
Tidemark product which is our data base. It's been updated. This is a project we've been working on for about I'm going to say the last year and a half. Anyhow, we have completed the project. Without any further ado, I'll turn it over to Matt Boutcher and let him explain the project.

(PRESENTATION BY MATT BOUTCHER AT THIS TIME.)

MR. BOUTCHER: Thank you very much. I'm available to answer any questions you may have.

MR. NOFFSINGER: I do have one question, Mr. Boutcher. You indicated that our customers can expect to see Accela wireless in the very near future, but I didn't hear a specific date as to when they would be seeing that.

MR. BOUTCHER: Well, we've been testing for the past couple of weeks with this Accela wireless software. On Monday the 15th of September, we will be using the Accela wireless software live and in the real production data base. That's going to be starting on Monday.

MR. NOFFSINGER: I think it's important to note that the Planning Commission back a year and a half, two years ago answered a call for improved customer service. That is the attempt here. To improve the service to our customers. We started that
phase with the introduction of a website and we moved forward with updating our data base as well as took it to the next level in implementing a wireless inspector. What used to take, as Matt pointed out, one to two days for the customer to get word on their permit, whether it had passed or if it didn't pass, now should only take a few minutes. It's not going to be a perfect system. There's going to be flaws in it and there will be some breakdowns in the program, but for the most part I think our customers will see an improved level of service.

CHAIRMAN: Mr. Boutcher, I want to thank you for an outstanding presentation. Well within the time limit we discussed. Thank you.

I also want to announce as far as the Planning Commission is concerned that Mr. Noffsinger brought this project to completion; although through many delays caused not by the commission or by the Planning Staff, but due to the change in the technology from one company to the other is well under budget. We've gotten quite a few more assets in the program than we actually bargained for due to the change and the upgrades that the new company allowed us to have.

Mr. Noffsinger, thank you.

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Mr. Boutcher, thank you for a job well done. We appreciate it.

Mr. Noffsinger, I think we're ready for our next item of business.

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PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 3

1414 Hill Bridge Road
Land Disposition
Consider comments regarding the sale of 101.592 acres on Hill Bridge Road.
Referred by: City of Owensboro

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. We find no conflict with the Comprehensive Plan.

This property was considered I think for disposition to the Humane Society. The plans seemed to have changed. The City of Owensboro plans to put this property out for sale to the general public.

With that we recommend a letter of no conflict be forwarded to the City of Owensboro.

CHAIRMAN: Is anybody here representing the City of Owensboro?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

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(NO RESPONSE)

CHAIRMAN: Anybody on the commission have any questions

(NO RESPONSE)

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

DR. BOTHWELL: Motion for approval.

CHAIRMAN: Motion for approval by Dr. Bothwell.

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.

Next item, please.

ITEM 4

South Owensboro Trail of Greenbelt Park Land Acquisition and Facilities Construction

Consider comments regarding a proposal to purchase approximately 13 parcels to complete two segments of the trail and to acquire property and construct the remaining South Trail segments in conjunction with the Martin Luther King, Jr. Loop and the Southtown Boulevard street projects.

Referred by: City of Owensboro

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed. We find no conflict with the Comprehensive Plan.

CHAIRMAN: Does anybody in the audience

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have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody on the commission have any questions?

(NO RESPONSE)

MR. CAMBRON: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

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

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGE - CITY

ITEM 5

1304 East Second Street, 0.27 acres
Consider zoning change: From B-4 General Business to I-1 Light Industrial
Applicant: Donald E. Logsdon, Audubon Loans, Inc.

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.
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. No additional access points shall be created onto East Second Street.

2. A minimum 3-foot high landscape easement with a 3-foot continuous element and one tree per 40-feet of linear boundary shall be installed between the existing sidewalk and the vehicular use area.

Findings of Fact:

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

2. The subject property is located in an area of existing mixed business and light industrial uses, where the Land Use Plan allows mixed uses to continue; and,

3. The reuse of the existing building on the subject property promotes maintenance and conservation of sound buildings.

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

CHAIRMAN: Is there anybody here
representing the applicant?

MR. KAMUF: Charles Kamuf. We're here to
answer any questions.

CHAIRMAN: Is there anybody in the
audience that has any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission
have any questions?

(NO RESPONSE)

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

MR. CAMBRON: Motion for approval, Mr.
Chairman, based upon the Conditions and Findings of
Fact 1 through 3.

CHAIRMAN: Mr. Cambron 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.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
ZONING CHANGES - COUNTY

ITEM 6

6101 Block, 6211, 6200-6400 Blocks Bickett Road, 7200-7300 Blocks, 7201-7301 Blocks Horrell Road, 187.48 acres
Consider zoning change: From EX-1 Coal Mining and A-R Rural Agriculture to A-R Rural Agriculture
Applicant: James C. Bickett

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 follow:

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

2. The subject property has remained in agricultural use since being rezoned for Coal Mining in 1982 and the applicant states that there are no plans to conduct coal mining activities on the subject property; and,

3. The subject property contains significant areas of prime farmland, which can be maintained through appropriate farming practices.

MS. STONE: We would like the Staff Report entered as Exhibit B into the record.

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CHAIRMAN: Is anybody here representing the applicant?

APPLICANT: Yes.

CHAIRMAN: Does anybody in the audience have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have any questions of the applicant?

(NO RESPONSE)

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

MR. HAYDEN: Make a motion for approval based upon Findings of Fact 1 through 3.

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 7

7415 Iceland Road, 0.60 acres
Consider zoning change: From B-4 General Business to I-2 Heavy Industrial
Applicant: Kinder Morgan Bulk Terminal, 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. Approval of a final development plan that shows removal of existing parking that is located within the right-of-way of Iceland Road and removal of existing parking that requires backing onto Iceland Road; and,

2. Approval of final development plan that provides screening/landscaping of all outdoor storage areas and required landscaping for vehicular use areas adjacent to street right-of-ways.

Findings of Fact:

1. The subject property is located in a Rural Community Plan Area, where heavy industrial uses are appropriate in very-limited locations;

2. The subject property immediately adjoins properties that are zoned I-2 Heavy Industrial;

3. The subject property adjoins properties that include heavy industrial activities; and,

4. The applicant's proposal would not
significantly increase the extent of industrial uses
in the vicinity and would not overburden roadway
capacity or other necessary urban services that are
available in the affected area.

MS. STONE: We'd like to enter this as
Exhibit C.

CHAIRMAN: Is there someone here
representing the applicant?

MR. HUFF: Yes.

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

MR. HARPER: Yes, I have a question.

CHAIRMAN: Would you come to the podium
please and be sworn in.

MR. ELLIOTT: State your name, please.

MR. HARPER: Gary Harper.

(MR. GARY HARPER SWORN BY ATTORNEY.)

MR. HARPER: I would like to know what
this is going to do to the adjoining property that
adjoins what's being rezoned?

CHAIRMAN: Is that your question, sir?

MR. HARPER: Yes.

CHAIRMAN: Would you sit down and we'll
bring the applicant up and swear him in and have him
respond to your question.
MR. CAMBRON: Let me ask him a question real quick.

I see here you live on the east side of Iceland Road; is that right?

MR. HARPER: Yes.

MR. CAMBRON: So Iceland Road, the property that's being rezoned there is a road in-between you and that property, right?

MR. HARPER: Now, this says it's joining my property. The acreage involved is 0.60. There's 18 acres across the road from me.

MR. NOFFSINGER: If I might for the record. There would be a roadway, Iceland Road between you and this property. The section they're rezoning is the corner lot at Old Highway 60 East and Iceland Road where the office building sits.

MR. HARPER: Where Lanham's coal office?

MR. NOFFSINGER: Yes, sir. That's the small acreage they're rezoning. Then they have a development plan as the next item which covers a much larger area. Approximately 19 acres.

MR. HARPER: Yes, 18 something acres.

MR. NOFFSINGER: Which there were plans for this property -- the rezoning of that property was approved back some time ago, as well as a
development plan on how they were going to develop
that property was approved and a variance was approved
by the Board of Adjustment to allow them to conduct
some activities closer to some areas than what would
normally be allowed. This would be, the next item
would be an amendment of that plan. I don't think
what they're proposing on this plan amendment would be
any more intrusive than what has already been
approved.

MR. HARPER: So the .60 acres is where the
office building is there now?

MR. NOFFSINGER: Yes, sir.

MR. HARPER: But the way it read on our
statement they sent us it was joining our property on
--

MR. NOFFSINGER: Right. By joining they
mean, I guess, if you remove the roadways then it
touch.

MR. HARPER: Then it would be joining.

That was my interest in it. You know, if it was
joining our property what it was going to do to us on
our property that we have there, already there. That
was my main question. I see where it's listed here as
it's completely across the road from where our
property is at. That was our main concern, what it
was going to do to us on our property there.

CHAIRMAN: Does that answer your question, Mr. Harper?

MR. HARPER: Yes, it does.

CHAIRMAN: The applicant, do you care to respond or make a statement?

MR. HUFF: Do I need to?

CHAIRMAN: Well, if you're going to make any statement at all we need you sworn in for the record.

MR. ELLIOTT: State your name.

MR. HUFF: Tony Huff.

(MR. TONY HUFF SWORN BY ATTORNEY.)

MR. HUFF: I think the discussion pretty well covered the issues of what the applicant is wanting to do on the property and should be addressed in the final or amended final development plan that, I thin, is the next item of discussion.

CHAIRMAN: Thank you very much.

We're ready for a motion.

MR. CAMBRON: Motion for approval, Mr. Chairman, based upon Conditions 1 through 2 and Findings of Fact 1 through 4.

CHAIRMAN: Motion for approval by Mr. Cambron.
MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.

Related Item:

ITEM 7A

7415, 7535 Iceland Road (TERMINAL RD) 18.85 acres
Consider approval of revised final development plan.
Applicant: Kinder Morgan Bulk Terminals, Inc.

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

I do have one question of the applicant and perhaps the Planning Staff. That is the proposed entrance drives into this facility going to each of the buildings and providing parking. I understood those were going to be paved, but I do not see that language on the plan.

CHAIRMAN: Ms. Stone.

MS. STONE: I thought it was on there.

MR. NOFFSINGER: Let me just ask the applicant.

Is that the intent, to pave those drives and parking areas?
MR. HUFF: It is.

MR. NOFFSINGER: We can adjust that on the plan. That's the only thing I have. It's in order.

CHAIRMAN: Thank you.

Does anybody else have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: The commission?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

3900, 4000 Blocks Medley Road, 4.519 acres
Consider zoning change: From A-U Urban Agriculture to R-1C Single-Family Residential
Applicant: Robert J. Wimsatt

PLANNING STAFF RECOMMENDATIONS

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Staff recommends approval because the applicant's 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 points on Medley Road shall be limited to the access points as located on the preliminary plats submitted in conjunction with this rezoning request. The access point for proposed Creekview Ct. shall be located a minimum distance of 250 feet from the centerline of Turtle Creek Drive. Additional access points shall be located spaced 250 feet apart, the first point being 250 feet west of the proposed centerline of Creekview Court, with the last access point being 282 feet east of the centerline of Deer Haven Drive.

**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 immediately adjoins R-1C Single-Family residential zoning and urban low-density residential uses to the east, west and south;

3. Sanitary sewers are proposed to be expanded
to the subject property; and,

4. The proposed development of the subject property should not significantly lower the level-of-service for vehicular traffic on Medley Road.

MS. STONE: We would like to enter the Staff Report as Exhibit D.

CHAIRMAN: Is someone here representing the applicant?

MR. ELLIOTT: State your name, please?

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN BY ATTORNEY.)

MR. WIMSATT: Mr. Chairman, Fellow Commissioners, let me just say that certainly I concur with the thorough review the staff has done on this application. Note especially the findings of fact, certainly I don't have any problem with it; nor the condition that the Staff has asked be placed on this application. Ask that you also note, again, that everything in this proposal is in compliance with the Comprehensive Plan. It meets the zoning classifications for R-1C. The related items are in conformance with all the development plans and have been thoroughly reviewed by the utility companies and the city engineer. Also mention that in recent years this commission has approved multiple rezonings,
totaling probably about 60, 70 acres or so joining this particular tract of four or five acres.

CHAIRMAN: Thank you, Mr. Wimsatt. Does anybody in the audience have a question they'd like to make of the applicant?

MR. ELLIOTT: State your name, please.

MR. INMAN: J. Todd Inman.

(MR. J. TODD INMAN SWORN BY ATTORNEY.)

MR. INMAN: My name is Todd Inman. I represent the chairperson of the Bon Harbor Audubon Area Neighborhood Alliance.

After a meeting on Tuesday evening the subject property that is at question here today falls within that neighborhood alliance. There was a consensus among that group that there are certain questions that we feel need to be answered. Those questions don't specifically relate to the project at hand, but they relate to the surrounding developments around that area.

You may or may not be aware that the city engineer, Marwan Rayan, had a meeting with the developer on the related subjects close to there, which is the Doe Ridge Subdivision and the Turtle Creek Subdivision. Specifically there were certain areas in the Doe Ridge Subdivision which were not up
to the Comprehensive Plan according to the regulations that had been filed. Those included several retention basis in addition to final coats of asphalt.

As of right now there's an agreement between the developer and the City of Owensboro for those certain conditions to be completed. That agreement stands until the end of September. At the end of September should those items not be completed, the City of Owensboro shall consider or go forward with relocation of the bond issued to that area.

We feel that it would not be in the public interest of the citizens of Daviess County and Owensboro to go forward with allowing new development when the potential exist for related properties to have a bond relocated. We're not totally against the actual zoning itself. It may be out of turn with the zoning, but more so the related subdivisions, but we don't feel that it would be in good interest.

Therefore, on behalf of the neighborhood alliance, we would like to ask the commission to consider tabling the request until such time that those requirements are met and that there is no concerns in regard to relating developments around there that they will suffer because of this additional development.

Now, whether or not that's a question, I
don't know, but it certainly is a statement.

Probably one question for the developer would be what recourses will there be or what's potential for not the same situation to occur?

There's a lot of residents here from both of those subdivisions tonight. In the interest of time, I think a lot of them may not come up and speak, but hope that their voice will be heard just by their attendance.

MR. JAGOÉ: Could I ask a question?

CHAIRMAN: Yes, Mr. Jagoe.

MR. JAGOÉ: If I understood you correctly, there are performance bonds, they're in place that the city has at this point. Those expire in September?

MR. INMAN: No, sir, they do not. The performance and surety bonds have been transferred from the OMPC to the City of Owensboro.

MR. JAGOÉ: In that transfer, did Marwan state whether or not they would -- do you understand that if there's no performance, that the city can capture those funds and complete the improvements?

MR. INMAN: Yes. We have correspondence from Marwan to the developer to that extent, stating that at the end of September should those items not be completed that they will start to ask for the surety
bond to be released back to the city.

Our concerns are by allowing additional development in there, it makes no sense even if development is occurring that you should allow a second development to be occurring whenever one is imperil or even possibly bond relocation. I don't believe that that's occurred. Well, anybody that's incurring administration doesn't know when a bond has been revoked so they're still wondering how the revisions will be taken care of. I think it's negligent to allow additional development within there whenever you know that the surrounding areas are already imperil by the same development.

MR. CAMBRON: Do you have specifics on what has not had --

MR. INMAN: In the correspondence between the city and the developer, certain items that must be addressed would be mud and debris must be removed and cleaned from the streets, specifically Silent Doe Crossing and a portion of Deer Haven. Streets must be re-rocked to asphalt grade. The streets must be proof-rolled. There are three separate detention basins that are not completed. The original basin is 90 percent complete. It needs regrading, seeding. The west basin is only 50 percent complete. The large
dry basin which is 80 percent complete. Concrete
channels and dressing up the basin is required.
There's a drive at 926 Deer Haven Drive which must be
removed and replaced. There's erosion control which
must be in place throughout the development.

The agreement between them said that the
asphalt basins, the one requirement that must be
completed before the end of September before the bond
is revoked, the additional items I think are suppose
to be contingent upon the development of that. We are
not asking, as I said again, to deny the request, but
we're merely asking for the commission to consider
tabling or delaying the request until such time that
there's guarantees these are done.

MR. CAMBRON: Is that a letter you have?

MR. INMAN: Yes.

CHAIRMAN: Mr. Inman, let me thank you for
your method of coming before the commission by
gathering together the facts and your neighborhood
alliance where we have one voice to speak and deliver
the issues, 1, 2, 3, 4, that need to be addressed. We
definitely appreciate that. All the people that are
here, thank you for doing that because it makes our
job a lot easier. You all have been very effective
and streamlined this procedure. We definitely
appreciate it.  

Now, in fairness I believe now that we need to hear from our applicant to address the issues that you brought forward which you made very plain and very easy.

MR. INMAN: I would be happy to tender to the commission the copy of the letter from the city.

MR. CAMBRON: I wanted to see that myself, please.

CHAIRMAN: Mr. Wimsatt.

MR. WIMSATT: Mr. Chairman, let me say too that I certainly applaud the efforts of the city for establishing the neighborhood alliances that they have done in recent years. I too can see the affects of that.

I have, as Mr. Inman mentioned, I have received the letter from the city. In the last five to ten years I've been involved in developing. Developed hundreds of lots, multiple subdivisions and I believe I have a very good working relationship with the inspectors and the engineers and the city and the county. When there's a problem, they notify me. Typically that's done verbally. Marwan sometimes will do that in writing. We'll have a meeting at whatever site we need to look at, if there's issues that he

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thinks are pertinent and then we'll address those
issues.

In the last five to ten years, Marwan has
I believe sent me three letters. The first two
letters on issues that he asked to be addressed were
responded to appropriately. The most recent letter is
being responded to too.

I had a meeting yesterday in the city
engineer's office to talk about another proposal
that's going to be coming before this board probably
in the next two months. While I was in there, I had
several phone calls. While I was in that meeting I
took one phone call from Yager Materials. Yager
Materials told me yesterday that I could share with
the city engineer that they did not see any problem
with getting that asphalt done by the end of
September. I told the city engineer several months
ago that I'd do everything I could to get that
accomplished, and I've done that.

Let me also mention too though, in
fairness to myself, you know, I understand it's
sometimes easy to kind of bring in outside items in to
a case. I understand that -- of course, we know that
the city and county both have professional staff that
are trained and they deal with these issues on a

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day-to-day basis. They determine what's the
appropriate way to deal with it and whether or not
they're legitimate concerns. They get a lot of phone
calls. Often times myself as a developer, gets blamed
for a lot of things they shouldn't get blamed for.

Certainly the street is something that I'm
responsible for. In this case, I've taken the
additional measure. I've already prepaid Yager up
front to make sure this gets done. They have the
money in hand. Yager does not do it, I'll give that
money to the city, but that should not be the case.

As a last resort, certainly the city does
have bonds on everything that I do. All that has to
be in order. The city has those bonds. I guess
technically the city could revoke those bonds. I've
never had that occur to me. I'm not aware of
instances where that has happened with other
developers, but I can assure you that I'm aware of
instances where other projects, certain phases have
drug out much longer than some of mine. I don't care
to mention those specifically. Again, it's the
responsibility of the trained professional staff of
the city and county to monitor the progress on the
projects and take whatever action they think are
appropriate.

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MR. CAMBRON: I agree with what you're saying, Mr. Wimsatt, but one thing that I see here is, you know, most of the time when people do have problems they're not trying to rezone other property. They're trying to take care of the problems. We're trying to rezone more property. I've been out there several times. A lot of these issues haven't been addressed.

MR. WIMSATT: Mr. Cambron, I have multiple projects going on at different phases of the development.

MR. CAMBRON: Sure.

MR. WIMSATT: I have multiple projects. I have to make the decision what's the most important. Certainly there's some things that don't get done as quickly as I'd like to get done either. Just as in every other business, body shop or whatever. Don't always get those vehicles out when you want.

MR. CAMBRON: You're exactly right.

MR. WIMSATT: All we can do is try to do the best we can --

MR. CAMBRON: But I'm not before here trying to get something rezoned either.

MR. WIMSATT: Let me just mention too. I do remember another case where I was asked to go out
and look at a project and we had a postponement. City engineer went out on site, did his job, and said, you know, this just really was not, this was not really an issue. I understand that sometimes it's easy to postpone items, but that cost me too.

CHAIRMAN: Dr. Bothwell.

DR. BOTHWELL: Mr. Noffsinger, so the bonds are in the hands of the city, no longer with the planning office; is that correct? Did I understand that?

MR. NOFFSINGER: Yes, sir. That's correct.

DR. BOTHWELL: They're viewing whether to take action on forfeiting or nonperformance and taking the bonds?

MR. NOFFSINGER: Yes, sir.

DR. BOTHWELL: That's the letter I assume I just read was about.

MR. NOFFSINGER: Yes.

DR. BOTHWELL: Thank you.

CHAIRMAN: Mr. Elliott, let me ask you a question.

MR. WIMSATT: Mr. Chairman, may I just make one other comment?

CHAIRMAN: Yes, sir.
MR. WIMSATT: I was also in the engineer's office this morning. I asked him very directly. Marwan, do you and I have a problem? He answered no. There are issues as there are on any project and those issues have to be addressed. I'm addressing those issues. Now, if this board chooses to take over review of every developer and make sure that things are progressing at whatever stage they want, you know, Mr. Chairman, we have trained professional staff that have the responsibility of doing that.

CHAIRMAN: Let me ask Mr. Elliott a question.

Mr. Elliott, as far as this commission is concerned, the transfer of the bonds to the city commission on the past projects that are in question actually puts the city in charge of the project. In other words, we have absolutely no recourse?

MR. ELLIOTT: We have nothing to do with the bonds being replaced and the city has the option to revoke or to enforce them to do the improvement.

CHAIRMAN: Now, the bonds are totally and absolutely to secure the said work mentioned here?

MR. ELLIOTT: Yes. With those bonds, Gary can probably address this, but there are estimates made. I think there's more money put up than what the
actual improvements are going to cost, isn't that
right, Gary?

MR. NOFFSINGER: I'm not sure exactly how
those improvements were posted, but I suspect it was
based upon the current cost of the improvements.
Current meaning when the final plat was submitted. I
doubt there was any -- there was a 10 percent
up-charge or 20 percent.

MR. ELLIOTT: To answer your question, it
is the city's responsibility. Those funds have been
transferred and it appears they're in the process of
making him perform the improvements.

CHAIRMAN: So consequently the citizens
and neighbors represented here are totally and 100
percent protected?

MR. ELLIOTT: Right.

CHAIRMAN: With all this work being done.
In the case, if I read the letter correctly some of
the stuff is 90 percent completed. Some of it is 80
percent. Some of it is 50 percent completed.

MR. ELLIOTT: Yes.

CHAIRMAN: So, in other words, Mr. Wimsatt
has proportionately paid that part regardless?

MR. ELLIOTT: Right.

CHAIRMAN: So we have no jurisdiction --
MR. ELLIOTT: We have no authority to do anything with that.

CHAIRMAN: His project that comes before us now recommended by the staff --

MR. ELLIOTT: Stands on its own.

CHAIRMAN: Must stand on it's own merits.

MR. ELLIOTT: Right. Of course, it too will also have to be properly bonded for the improvements and everything. It stands on its own. I don't think this commission can hold him hostage because of something that wasn't done on the other project. This project stands on its own and is to be rezone or not rezone.

MR. WIMSATT: Let me mention too, Mr. Chairman, for the record that I do have an agreement with the builder for the one of the projects that you're considering tonight, Creekview. It is in my agreement with that builder that those improvements will be completed within six months, barring any unforeseen or extreme weather condition.

MR. CAMBRON: The improvements you're doing?

MR. WIMSATT: Yes, at Creekview.

MR. CAMBRON: Just a couple of comments. First, I want you to understand I'm not
against this rezoning. Everything seems to be in line here.

MR. WIMSATT: I appreciate that.

MR. CAMBRON: Just a couple of things I have. The issue of the green space to the east of the entrance to the street, is there a retention basin in there also?

MR. WIMSATT: In virtually all projects brought before this commission for consideration, as is required by the public improvement specs and the city and county engineer review, their has to be some type of detention/retention. Sometimes those are wet basin. Sometimes they're dry basins. In this particular case, it's a very shallow dry basin stretched out over a long area.

MR. CAMBRON: Is there going to be any trees planted along that area through there, Mr. Wimsatt?

MR. WIMSATT: Mr. Cambron, right now there are trees planted on several of the adjoining property owners. If it is the desire of this commission that additional trees be planted, I have no problem with that at all.

CHAIRMAN: Mr. Wimsatt, if you would, let me bring Mr. Inman back to the podium for just a
Mr. Inman, based on the review that this commission has made and several questions that were raised by commissioners, I hope you understand that all the neighborhoods are totally and absolutely protected in this situation, the bonding situation that the city enforces with the city engineers and everything. All the work unquestionably will be completed; especially, in these issues where we've got 80, 90 percent complete. The city has 100 percent coverage on it to begin with. Plus, as Mr. Noffsinger said, even a 10 percent up-charge. We as a commission must face each one of these issues individually. We really -- the issue of these other things that have not been done or have been held up actually do not come under our jurisdiction. I wanted to make it explicitly clear by clearing it with Mr. Elliott that that's where we stood.

So any vote that this commission takes will be on the recommendation of the staff on the current project meeting current stipulations. So issues and things that you brought before us are very important and we understand that, but you have to understand where our jurisdiction ends and where it begins.
MR. INMAN: Very much so. If I might, Mr. Kirkland, I think there's two additional points that must be considered. Even with the project standing on its own, the merits, and this is what the staff has to look into, the surrounding properties and adjacent properties so-to-speak, how they relate to that project. That is always something that comes in in rezoning is surrounding areas, things of that sort. If you have an area which is surrounding that that is being developed currently is not meeting the standards, i.e. there's obviously an issue that has to be done, then the past performance has to be considered not of the rezoning, but in the approval of the - and I apologize for not knowing the technical term - subdivision plat. Is that close enough?

MR. NOFFSINGER: Yes.

MR. INMAN: The second thing is there's precedent that has to be considered. Mr. Wimsatt talked about several times he's known of prior times the commission has done certain things. I think there's a certain precedent that if these items are not completed at the end of September, which although the money is there, if the bond has to be revoked then what message does that send? Obviously, we've got some very competent professional developers on this
project that have to deal with bonding issues every
day. If a bond is revoked, the future bonding
capability of that individual or that developer is
severely hanged, unless you go to an authorized letter
of credit at that time.

My comment to that regard would be this
actual development, possibly not the rezoning, it may
be the improper time to say that. This development
until such time that these issues are resolved we
could be standing before you again in a year asking
for the exact same thing, granted the money is sitting
there in a separate pot, but that doesn't make it
legal not to do that. Just because you had to set
aside the security or set aside the bond, it doesn't
make it right for a developer to walk off a job and
everyone say, well, it's fine because the money is
there. Does that then mean the developer can go on
and do that four or five more times? I think that's
bad precedent for the citizens of Owensboro and
Daviess County. It looks bad for developers in
general.

Like I said we're not asking for it not to
be approved. We're asking for it to be tabled until
those items can be performed.

CHAIRMAN: Thank you. Does anybody else
have any questions or comments from the audience?

(NO RESPONSE)

CHAIRMAN: Does anybody else -- Mr. Wimsatt.

MR. WIMSATT: Mr. Chairman, I just ask that you too, again, recognize the fact that tabling something for me cost me as well. I mean -- as far as setting precedent, I've never had a bond revoked on me. City and county has a lot of bonds on me. They're all protected. I've never had a bond revoked and this bond won't be revoked either.

CHAIRMAN: Thank you, Mr. Wimsatt. Does anybody else from the commission have any questions of the applicant?

(NO RESPONSE)

MR. CAMBRON: Is chair ready for a motion?

CHAIRMAN: Mr. Cambron, chair is ready for a motion.

MR. CAMBRON: Motion for approval based on Condition 1 and the Findings of Fact 1 through 4, but also I'd like to stipulate that there are trees screened down the east side there from the neighbors in the back there every 40 liner feet. That's my recommendation.

CHAIRMAN: Mr. Noffsinger, do we need to -
- can we accept that as a motion or do we need to put that into the plan?

MR. NOFFSINGER: We can accept it as a motion on the zoning change. Then the plans will have to be altered to show those trees which can be done.

DR. BOTHWELL: Mr. Chairman, should we not ask the developer to --

CHAIRMAN: The developer is the next call.

MR. CAMBRON: He indicated to us --

CHAIRMAN: Well, he did, but now he has to agree to it that he will do it.

MR. HAYDEN: One more thing. Before he answers that, will those trees hamper any of the runoff of the water that's coming down through there? Are we going to make him do something that's going to hamper the basin? I don't know. I'm just asking the question.

CHAIRMAN: Mr. Wimsatt, we've got a proposal and a question. Why don't you take the proposal first and the question second.

MR. WIMSATT: As far as Mr. Cambron's proposal to put the trees and making that a condition of the rezoning and the approval of the subdivision plats, I have no problem with that condition at all.

As far as it being a problem, there is an
area between the proposal limits of the detention and
the adjoining property owners. In fact, as I said,
some of the adjoining property owners already have
trees along that boundary line. Some of those trees
already extend over onto my property. There's
currently some buffer there, but we'll make sure that
we do additional buffer to accommodate the condition.

MR. NOFFSINGER: I do want to state for
the record that we need to be mindful that there's a
major power line easement located in that area.

MR. WIMSATT: Sure.

MR. NOFFSINGER: The trees may not -- you
may want to reconsider the trees.

MR. WIMSATT: The trees can be planted in
power line easement. You just have to meet certain
species requirements so they don't grow too large.

MR. CAMBRON: And you'll make sure that's
met?

MR. WIMSATT: Yes.

MR. CAMBRON: That's my proposal and my
motion.

CHAIRMAN: Mr. Cambron, would you possibly
add an amendment to your proposal to the fact that
based on approval from the city engineer, because we
sure wouldn't want to have him do something and then
have it in the plan that we put in the plan and then
the city engineer, you know, he plants these trees and
then --

MR. NOFFSINGER: Utility company.

CHAIRMAN: Subject to --

MR. CAMBRON: Signing off and the city
engineer signing off on it.

Did that answer your question?

MR. HAYDEN: That answered my question.

CHAIRMAN: Mr. Cambron, would you resubmit
your motion.

MR. CAMBRON: Motion for approval based on
Condition 1 and Findings of Fact 1 through 4, and the
condition also that there are trees that are in the
limits of the Owensboro Municipal Utility or Kenergy,
or whoever that is out there, every 40 linear feet
down the east side property line between the detention
basin and the local property owners there; and that
the city engineer signs off on that too so it does not
hamper any runoff. That's my motion.

CHAIRMAN: Thank you, Mr. Cambron. Is
there a second?

MR. HAYDEN: I'll second it.

CHAIRMAN: Second by Mr. Hayden. All in
favor raise your right hand.
EIGHT COMMISSION MEMBERS PRESENT - DAVE APPLEBY, SCOTT JAGOE, IRVIN ROGERS, SISTER BOWLES, DREW KIRKLAND, NICK CAMBRON, JUDY DIXON AND MARTIN HAYDEN - RESPONDED AYE.)

CHAIRMAN: All opposed.

(ONE COMMISSION MEMBER - DR. MARK BOTHWELL - RESPONDED NAY.)

CHAIRMAN: Eight to one. Motion carries eight to one.

Next item, please.

Related Item:

ITEM 8A

Creekview, 3.312 acres
Consider approval of major subdivision preliminary plat.
Applicant: Robert J. Wimsatt

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

CHAIRMAN: We have somebody representing the applicant. Are there any questions, any further questions of the applicant?

(NO RESPONSE)

CHAIRMAN: If there are not, Chair is ready for a motion.
I'm sorry, we do have a question from the audience.

MR. ELLIOTT: State your name, please.

MR. ALVEY: Joe Alvey.

(MR. JOE ALVEY SWORN BY ATTORNEY.)

MR. ALVEY: My wife and I have only been there a short time and our property faces Medley Road. That's right at the corner of Medley Road and Turtle Creek. So our property directly bounds the new subdivision, Creekview. Ours would be right next to the drainage basin. I've already talked to the city engineers the other day, Tuesday. I took off a day of work to look into this. They do not want trees in there to prohibit their mowing. As stated to me, they want to go in there with the mower and mow it. They don't want to have to go in with a mower and ten other people and trim around it. So they do not wish for trees to be in there. That's what the statement was given to me.

Also our concern, we've been through the neighborhood and looking at the proposal, the water shed that runs through there, what kind of environmental status has been done on that and the impact of ten lots, city size lots right there plus the concrete drive that's going to provide passage to
those. The fact that the property lines run into the center of the basin which gives the property owner's rights to cut any of those trees and so forth that are already presently there.

Why a lot of the people moved out there and built property in that area because at that time I understand it was less to believe that that would be maintained or that would kind of stay in that state. That's our objections to this. I'm objecting to it being done period for the fact of the size of the lots and of the deed restrictions and how they differ from the property that's only 200 or 300 feet or approximately 150 feet away. Also the amount of property that those people are going to be having to build in; which they've got 20 feet from the center of the drainage on the back of the property and there's a 50 foot easement in the front which leaves them a foot print of approximately, what, 50 by 40 feet to build in.

I'm thinking it's being rushed into. It doesn't fit in with the surrounding portions of 160 square foot homes and 120 square foot homes that are being built from phase one, two and three. Phase one has been completed I've been told for a year and final improvements to the street and drives have not been
done yet. Is all of that -- I don't know if Mr. Wimsatt has done an environmental impact. If he makes those lots in there and there's more roof area, less green area, and there's numerous wildlife in the area and what kind of impact that's going to have. I'll stop there.

CHAIRMAN: Mr. Alvey, I can respond at least to the runoff situation. That is something that the city and the county engineer directly have say so over. How much their retention basin is, how many homes can be put in, how much hard surface area can go in, and how big the retention basins have to be to accommodate the storm water runoff. So that's totally handled in the engineering office of the city or the county.

MR. ALVEY: No studies have been done in relation to this?

CHAIRMAN: Well, they have been done or the plan wouldn't be before us at this point. The city and the county engineers state how big and where the runoff must be done. That's completely done by engineering staff.

MR. JAGOE: I believe it's in the public improvements specs, the runoff and the size of the detention. I don't want to answer for Mr. Wimsatt,
but more than likely his engineer had to run the
calculations. Those calculations are then submitted
with the plan. Then the city or the county engineer,
wherever the property would be, then reviews those
calculations. May adjust it. May say that they agree
with the numbers and whether it's pipe detention size
or whatever is considered for how fast the runoff
takes place to how much hard surface is out there.
Has to do with what the upstream flow is and what's
going to take place downstream as well.

MR. ALVEY: Also on any type of building
materials that run off into the water shed and so
forth? Is that also taken into account? I know
you're talking about water drain and drain off, but
that's different from the environmental impact, as far
as chemicals and so forth on water shed in that area.
Is that not correct?

MR. JAGOE: I don't know that there's
environmental impact that's done from a chemical shed,
from chemical runoff that would maybe be from asphalt
shingles on this property any more than it was done
when yours was put in. I'm not aware of any.

MR. NOFFSINGER: No, that's not a
requirement.

MR. JAGOE: I'm not aware of that
MR. ALVEY: What may be done six years ago is holding for any projects in that area? I mean does something have to be done when he makes this proposal, something have to be done then in looking at that proposal versus like, you know, if he just put half acre lots in there, that would meet the rest and be in accordance with the other property that's directly related in that area versus ten lots?

DR. BOTHWELL: Are you referring now to runoff or something else? I'm not sure where you're going to.

MR. ALVEY: Runoff.

DR. BOTHWELL: Are you talking about runoff or pollution?

MR. ALVEY: The runoff, I guess, has been covered on his study. You're saying also that any type of bleed-off from building materials or pesticides and so forth have been covered also.

DR. BOTHWELL: I don't think there is a regulation on that on homes.

MR. ALVEY: There's no regulations on that?

DR. BOTHWELL: No.

MR. JAGOÉ: You can put as much pesticide
on your lawn as what somebody might want to do on this one here as long as you're not using some type of illegal product that couldn't go through.

MR. ALVEY: Then the Zoning Commission, do they consider the type of dwellings and the type of size lots in accordance with the other individual property that's in and around that area?

MR. JAGOE: With any zoning classification, there's certain size, lot size that you have to meet. Obviously here the zoning is contiguous with everything around it except for the north side of the property which is zoned EX-1 I believe, isn't it?

DR. BOTHWELL: Yes.

MR. JAGOE: To east is R-1C. I believe everything around the property is R-1C.

MR. ALVEY: No, that's incorrect. Our property is agricultural.

MR. NOFFSINGER: Mr. Alvey, this community has not adopted design guidelines or standards. Meaning if you meet the minimum lot size frontage in that zone, that is the only requirement you have. You have certain maximums that you can't build a home and exceed those maximums, but there are no minimum sizes of a home, if you will. There are no design
guidelines, if you will, that speak to the character
of the home, value of that home.

That is based upon the developer of that
subdivision and they have that right in this community
as the property owner to develop the type of home on
that property as they see fit. Now, many of
developers will protect a development to an extent or
a degree in their private deed of dedication, and they
have that right, but that's the developer that does
that. The local community does not control it.

MR. ALVEY: The deed of dedications are
different right there around it. I mean there's a
small slice going in there that did differ from the
surrounding, on the three sides that surround it.

MR. NOFFSINGER: Right. As a developer,
in this community, he has that right. The community
does not regulate that.

MR. JAGOE: I might add. Once a community
hits a certain percentage of sellout, generally you'll
see a covenant and restricted, protective covenant and
restrictions that the homeowners within there have the
right to change them, if they so desire. Generally
with the majority of how many people may be within the
neighborhood. Once everybody has purchased an
individual site, they may decide that they abolish to
have protective covenant or they adopt 50 more.

I'd like to get some clarification. I'm seeing on here that all adjoining property is R-1C. He's stating that his is agricultural.

MS. STONE: His lot is zoned still A-U. It was built prior to the development of the subdivision. So right at the corner of Medley Road and Turtle Creek Drive, there's one lot that's zoned A-U and the rest is zoned R-1C throughout that subdivision.

MR. JAGOE: Do you have protective covenant on your site?

MR. ALVEY: No, sir I do not.

MR. JAGOE: You do not. So yours is different than what your neighbors would be?

MR. ALVEY: This is correct.

MR. JAGOE: Thank you.

MR. ALVEY: That's all I have.

CHAIRMAN: Thank you.

Does anybody else have any questions?

Yes, ma'am.

MR. ELLIOTT: State your name, please.

MS. DUPLANTIS: Joanie Duplantis.

(MS. JOANIE DUPLANTIS SWORN BY ATTORNEY.)

MS. DUPLANTIS: I just have a few things
that I would like to say about this development.

Number one, in my backyard is going to be
the water basin, at the very end of my back yard.
I've got a young daughter. What's going to happen if
she falls into it? Is that basin needed if the
development doesn't happen?

MR. CAMBRON: I think he said it was
fairly shallow. I don't know.

MS. DUPLANTIS: She can drown in a
bathtub. We were told when we bought the property
that there wouldn't be anything until the other side
of the creek. Then we were also told, everyone in the
neighborhood was told everything was going to go
upscale. Then modular homes were put in. These homes
are smaller homes that have to be built. We had to
have 80 percent brick. We had to have a brick
mailbox, a two car garage, 1500 square feet. The new
development only has to have some brick somewhere on
the front of the house, a one car garage. It is in
the same neighborhood.

He's going back by making another, saying
it's another name, but it's the same neighborhood.

It's in our backyard.

I have got a 3,000 square foot house, a
$200,000 house and I'm going to have a road running
behind me, a ditch behind me, lower income houses behind me, and a road in front of me. He talks about his protection, you know. What about ours? What about ours? What about our property value? There is a time and a place for us to stand up and say enough is enough. He owns land all over the place. He can build someplace else.

I don't know any other way to say it. I don't own the land. I know I don't own the land, but there's big power lines back there. The thought of a yard having a creek running through it is ridiculous anyway. Who is going to want it? Who is even going to want property like that? How am I going to sell my house if he's allowed to do this?

Mr. Wimsatt, do you want to buy my house? Do you want to buy my house?

CHAIRMAN: You need to address us and we'll address Mr. Wimsatt.

MS. DUPLANTIS: Ask him if he wants to buy my house, if he wants to buy my property. Where is my protection? I expect the city to protect me. You know, it was my fault that I didn't get it in writing. That I took the man for his word, but I've lived there for almost three years and I still don't have my street paved and I don't care if Yager Material has

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the money or not, the street needs to be paved before he's even allowed to think about starting something else. We have to drive around the manholes and everything to not tear your car up. It's just one thing after the other. It's one lie after the other and we need some protection. This neighborhood needs some protection.

DR. BOTHWELL: Mr. Chairman, --

MS. DUPLANTIS: If it doesn't happen, you're just going to have a bunch of houses sitting there that's useless, worthless. None of us are going to get our money for it. If we try to sell it, we're probably all going to go bankrupt.

I want to know who is going to be there to protect my daughter. I really do. I want to know who is going to be -- I'm at the deepest end of that water basin and it is right at my backyard. What are you going to do to keep my child from falling in? I can put a fence up, but who's going to buy the fence?

Why should I have to buy a fence just because he wants to put ten more houses in there. They're just useless. The whole thing is useless. It's stupid. It's crazy. I cannot even believe it's come this far.

I'm sorry, I am angry. I'm very angry that somebody can do this to people. Lie to people. Basically put
one road in, put one road in and then build ten houses
and call it another neighborhood.

CHAIRMAN: Let us bring the applicant to
answer the questions that you have.

Dr. Bothwell has a comment that he wants
to make and let me get his comment first and then
we'll give the applicant his chance to respond.

MS. DUPLANTIS: Thank you.

CHAIRMAN: Thank you. Dr. Bothwell.

DR. BOTHWELL: Mr. Chairman, understanding
her distress, but the issues she raised are really
matters for the city government to address. Not for
this board. I feel for you, but as our attorney
stated we're not able to act punitively. That's not
our role. The city has the bonds. They are the
enforcement agency now for your roads and everything
else. You should go and let them know how you feel
and get your streets. That was my only comment.

CHAIRMAN: Thank you, Dr. Bothwell.

MR. HAYDEN: I want her to understand.

Does she know that this goes before the city
commission before final approval? Is that right or
not?

MR. ELLIOTT: Yes.

CHAIRMAN: Mr. Wimsatt.
MR. WIMSATT: Three comments, Mr. Chairman.

As far as the asphalt, the asphalt is down on the project. There is one-inch of finish asphalt that hasn't been put down.

Everything is in compliance with the development standards and has been thoroughly reviewed by the engineering staff.

Third comment is I think of what I've seen a number of times and heard a number of times about smart growth and you develop pockets of land, you know. That's what this is, is a small pocket with everything already developed around it. The utilities and services are there.

CHAIRMAN: Mr. Wimsatt, I may have a question. In her assessment of the properties of this small or this area, whatever the area may be, the question has to come to mind, and she did raise that question, about the property values. I believe that was one of her questions. Stating that a said value for her home versus a said value in requirements of incoming homes. Whereas she had to have a brick mailbox. She had to have 80 percent, am I correct, certain percentage of her house must be bricked.

These other homes that are coming in there these
requirements are not in their dedication of the deed and their requirements. What will that do, and her major concern, and I can totally understand that, is what do you anticipate these homes selling for? In what range?

MR. WIMSATT: I'm not the builder of the homes, Mr. Chairman. I would guess -- let me say that even within the Turtle Creek Development Subdivision, the minimum is 1500 square foot. There are homes in that subdivision that are close to 1500 square foot and there's some that are larger, as Ms. Duplantis' is. The fact that Ms. Duplantis chose to build a 3,000 square foot house is not my decision. I put basic restrictions that everyone had to abide to. The same thing, there's restrictions on -- on the other side of the ditch, there's a ditch that would go past this proposed project, Creekview. Those homes are $175,000 homes. Somewhat of a transition from an all brick to 100 percent vinyl where you have kind of a combination brick and vinyl. Site-built homes, yes, they're already in Turtle Creek Subdivision. Appropriate buffering, whatever this commission ask.

As far as the detention basin, there's a ditch 10, 15 foot deep on the back side of Creekview. There's --

CHAIRMAN: Excuse me. Let me --
MR. WIMSATT: Right now if her daughter went through the weeds, there would be no obstruction for her falling in a 15 foot ditch. There's other detention basins. I don't know really how to address that, Mr. Chairman.

CHAIRMAN: Is this wet or dry?

MR. WIMSATT: This is a dry basin.

CHAIRMAN: Would you explain for the commission and our guests that we have here the difference between a wet and a dry retention basin?

MR. WIMSATT: I'm not a professional engineer, but basically the dry basin does not hold water on a regular basis. It just simply holds the water during extreme heavy rain.

CHAIRMAN: Thank you. Mr. Cambron.

MR. CAMBRON: Mr. Wimsatt, just real quick. We're looking at about 3.3, three-tenths of an acre. Was that property ever offered to these people for sale, the ones that back up to it?

MR. WIMSATT: It certainly was. For several weeks I dealt with one of the adjoining property owners. I did not speak, obviously I can't tell who is saying what behind me, but I did not speak to all the adjoining property owners. I do want to be clear. I did speak to one of the adjoining property owners.
owners who is involved with building homes and has
built several homes in Turtle Creek Subdivision. I
thought maybe he might have an interest. Spent
several weeks -- offered it to him first. They did
counter with an offer that just simply I couldn't
accept. Another builder stepped up and agreed to give
me what I thought was a fair market price.

MR. CAMBRON: But you didn't go to the six
different --

MR. WIMSATT: It was my understanding --
actually I join the property so I'm one of the six, I
guess. Actually the builder that's going to be
building these homes owns one of the lots as an
adjoining property owner. The other four, I guess,
Mr. Cambron, two of them I spoke with. Mrs.
Duplantis' husband, in fact, spoke with me out in the
field. His comment to me was that his primary concern
was that whatever goes back there that it be
site-built houses. Didn't want manufactured homes
such as Doe Ridge. Mr. Chairman, I don't want to get
into he said, she said.

MR. CAMBRON: I didn't want that. I just
want to know if you offered.

CHAIRMAN: That really has no bearing on
what we're doing here.
Does anybody else have a statement?

MR. ELLIOTT: State your name, please.

MR. PINKSTON: Bob Pinkston.

(MR. BOB PINKSTON SWORN BY ATTORNEY.)

MR. PINKSTON: You've probably got a map here of this proposed --

CHAIRMAN: Yes.

MR. PINKSTON: Okay. He's got ten houses back there plotted out. The same distance in the front is five houses. That really doesn't make any sense to me why anybody would want to buy a lot and build a little house back there. It is going to lower our property because you've got two houses versus one, the size of them. Another thing, he said a dry basin doesn't hold any water. What use is it?

CHAIRMAN: I think I understand, there again I'm not a professional engineer, but we do have several here. The way he stated, he didn't say that it didn't hold water. He said that there was not standing water. A dry basin was to take when there's an excessive storm or something, when these other basins and the runoff is greater than they can handle. In other words, it would hold water, but not on a regular basis. Only when there's a tremendous downpour in a storm.
MR. PINKSTON: It would have to be for the overflow, right?

CHAIRMAN: I'm not going to put words in his mouth. I was just restating what he stated.

MR. PINKSTON: Another thing, where is the basin in this subdivision for these lots? I mean that retention. Is that for those ten lots, that retention basin?

CHAIRMAN: Let's have Mr. Wimsatt answer your question.

MR. PINKSTON: If that's the case, I don't know where it would be. What I hear it's on the other side of the creek. If it's on the other side of the creek, it wouldn't do that subdivision any good, right?

CHAIRMAN: There again let's have Mr. Wimsatt answer that question.

MR. PINKSTON: Thank you.

CHAIRMAN: Mr. Wimsatt.

MR. WIMSATT: The basin in this project is for this project.

CHAIRMAN: Are there any other questions from the audience or from the commission?

Yes, ma'am.

MS. OWENS: I just have a statement.
CHAIRMAN: Come to the mike and be sworn in.

MR. ELLIOTT: State your name, please.

MS. OWENS: Carol Owens.

(MS. CAROL OWENS SWORN BY ATTORNEY.)

MS. OWENS: I have a question. How can you all — how can he develop property under a power line when we had to build our house 75 foot away from the right-of-way on that power line. They made us move our house. We couldn't put it on the lot where we wanted because there was a power line. How is he going to build houses under that power line?

MR. NOFFSINGER: He's not. All the homes will be built outside of the easement.

MS. OWENS: Seventy-five foot from the power line? There's no way.

MR. NOFFSINGER: The street will be located within that easement. The homes will be outside of that power line easement. There's a 150 foot power line right-of-way. That's taken in, the street takes that in. These lots, the building area on the lots will be outside that 150 foot power line easement.

CHAIRMAN: Yes, ma'am, do you have another question?
MS. DUPLANTIS: I would ask the committee
to not approve this tonight and give Mr. Wimsatt the
chance and us to own the property right in front of us
to come to an agreement for us to buy the property
from him if that's what it takes so that we don't own
property that's worth nothing.

CHAIRMAN: Mr. Elliott.

MR. ELLIOTT: We have already recommended
it for rezoning. I think we're addressing issues that
we are not -- we're on unrelated items now. I don't
think we can go back and undo anything. We are
recommending it for rezoning and it goes to city
commission. If they want to go before the city
commission and address this there, that's where they
should take these issues. We've already taken action
on the zoning. There's nothing we can do about that.

MR. APPLEBY: There's nothing to prevent
the property owners to still negotiate buying this
property no matter what we do.

MR. ELLIOTT: That's right.

MS. DUPLANTIS: But you do have to approve
the subdivision; am I correct?

MR. CAMBRON: But it's off -- it's all
okay. Everybody signed off on it. The subdivision
plat is as per --
MS. DUPLANTIS: Item 8a is consider

approval of major subdivision.

MR. CAMBRON: Preliminary plat, right.

MS. DUPLANTIS: What's that mean?

MR. NOFFSINGER: Let me address that.

It's a preliminary plat. It's a construction drawing.

It does not create lots. The developer, once the
construction is complete, the street is cut in, is
ready to actually transfer property. You will have to
submit a final plat to this commission. At that time
a surety for any improvements that haven't been
installed. This plat is merely a construction
drawing. It is not for the transfer of the land and
the lots.

CHAIRMAN: This commission is pretty much
bound if the developer meets the said requirements and
the staff okays it and makes a recommendation, unless
we find some unusual fault with the testimony or with
the facts that are given to us. If he meets all our
set regulations, then this commission can vote any way
they want to. Obviously, we're nine individuals up
here, but we are somewhat bound by that because then
Mr. Wimsatt can come back and take us to court saying
this should have been passed, based on the
Comprehensive Plan and everything that he meets the
requirements. But as far as you all as individual
property owners, even after this is voted upon,
negotiating with Mr. Wimsatt is totally amongst you
all and how you all might handle it.

MS. DUPLANTIS: What else can we do? If
we can't come to an agreement with him, what else can
we do? Do we call a lawyer? Do we fight it that way?
How else can we fight it?

CHAIRMAN: I would have to refer that to
Mr. Elliott.

MR. ELLIOTT: This body recommends. The
city commissioners will either approve or deny that
recommendation. So this comes before the city
commissioners. We are a recommending body. At this
point it's been recommended for approval. The city
commissioners have to consider it and either deny or
approve this recommendation. So I guess to answer
your question, your next step would be to go to the
city commissioner meeting and state your objections.

MS. DUPLANTIS: Thank you.

CHAIRMAN: Yes, ma'am.

MS. ALVEY: Tamara Alvey.

(MS. TAMARA ALVEY SWORN BY ATTORNEY.)

MS. ALVEY: Our property is on Medley
Road, adjoins this proposed subdivision. The road is
going to go in right at the edge of our property, if I understand it right. Is there going to be any consideration made by Mr. Wimsatt if this is approved and we can't do anything about it, obviously, for sounds abatement? I've already got Medley Road on front and Turtle Creek Drive on the other side. I was told nothing would ever be over there too, but is there going to be some kind of sound abatement for that road?

CHAIRMAN: I cannot answer that, but we'll bring Mr. Wimsatt up to answer that question.

MR. CAMBRON: Where did you live exactly, I'm sorry?

MRS. ALVEY: 3954 Medley Road.

MR. WIMSATT: Mr. Chairman, that's not customary.

MS. ALVEY: I don't understand because on the other development he's talking about you're talking about putting trees between those residents and that development, but he can't put any kind of sound abatement between his street and the houses that are going to be facing that?

MR. NOFFSINGER: You're speaking of the same property line I do believe.

Mr. Cambron, the trees, weren't they to be
installed along that roadway?

MR. CAMBRON: Can you show me where you live here on this map real quick?

MR. NOFFSINGER: On the corner lot of Medley Road and --

MS. ALVEY: Corner lot. I'm not in the subdivision. I'm on the corner of Medley Road and Turtle Creek Drive.

MR. CAMBRON: Just show me.

(MRS. ALVEY COMPLIES WITH REQUEST.)

MS. ALVEY: That was my only question.

There's no sound abatement because I'm going to be surrounded by road now?

MR. CAMBRON: If I'm understanding, if you're living at, and correct me if I'm wrong, is it 959 Turtle Creek Road?

MS. ALVEY: No. 3954 Medley Road.

CHAIRMAN: She's across the street.

MS. ALVEY: No. I'm at the corner. Turtle Creek Drive --

MR. NOFFSINGER: Ma'am, you will have a tree every 40 feet for sound abatement.

MS. ALVEY: The city engineer said they didn't want --

MR. NOFFSINGER: If the city engineer and
the utility companies approve that.

MR. CAMBRON: Mr. Wimsatt I feel like is
going to try to put trees in there as best he can,
considering that I asked him to do so and it's been
read into the record. Of course, that is contingent
on OMU or Kenergy or whoever that is, and the city
engineer or county engineer, whoever is going to be
taking care of this.

MRS. ALVEY: How many feet?

MR. CAMBRON: Every 40 feet. You're
looking at approximately — —

MRS. ALVEY: Well, three and a half of
those house are going to be looking at the side of my
house. I'm going to have them looking at my bedroom
window.

MR. CAMBRON: That was my contingent, was
that he puts trees in there. That's about all I can
do, that we can do.

MR. ELLIOTT: State your name, please.

MR. ALVEY: Joe Alvey.

I don't think that you realize, but before
you made the amendment of what the properties, because
we were talking about the Medley Road property there's
six lots. There's two different issues. There's six
lots that face Medley Road that Mr. Wimsatt has
proposed.

MR. CAMBRON: We haven't even got there yet.

MR. ALVEY: You all have already approved that.

MR. CAMBRON: We're still on 8a.

MR. ALVEY: I know. That's where I'm at, 8a also.

MR. CAMBRON: You said something about 8b. We haven't got there yet.

MR. ALVEY: 8a is the six that you all have already approved, the 4.519 acres that you approved and talked about the trees, that portion, and you all approved that and talked about the trees. That was the back line lot facing into Doe Ridge.

Now, Creekview runs along the creek east of the creek between Turtle Creek and the creek and the power line. The gentleman stated that he had to stay 75 feet away. On our side of the power line it's 100 foot easement. On the new subdivision side, it's 50 foot easement. I'm just making statements so you all know exactly what the boundaries are and what the limitations are also.

MR. CAMBRON: Mr. Chairman, can I ask him to come up here and show me exactly where he's
talking? Can you show me, Mr. Noffsinger.

CHAIRMAN: Mr. Noffsinger can.

MR. CAMBRON: I see he lives there.

MR. NOFFSINGER: The trees go in here.

MR. CAMBRON: I understand.

MS. STONE: The zoning item includes both the six lots on Medley Road and the Creekview Subdivision. So your motion I believe was for the trees along the east line of Creekview Subdivision.

MR. CAMBRON: Right.

CHAIRMAN: Thank you, Ms. Stone.

MR. JAGOE: But as you stated, you were saying Marwan did not want those in there. Wasn't that correct?

MR. ALVEY: Sir?

MR. JAGOE: In your conversations with Marwan, he was saying that he did not want the trees I guess on the bank.

MR. ALVEY: With Mr. Sheppard and another lady, and that was on Tuesday. Two city engineers. They made the statement that they would not want because I talked about evergreens and we talked about regular hardwood trees. He said that they would not prefer the hardwood that would drop leaves in the fall. That evergreens would be better, but they did
not want to mow around those because when the bonds are released and the city takes it over, the city would be responsible for keeping the dry basin mowed.

MR. CAMBRON: Let me say this, and I don't mean this in a condescending way, but the city is not here.

MR. ALVEY: I realize that. I'm just making a statement. You all were talking about referring and getting approval from the city. I'm telling you what's already transpired in conversation.

MR. CAMBRON: The motion was made and it was accepted.

MR. ALVEY: For the six acres. That's the way I see it. Then we've moved along to 8a, which has not been taken a vote on.

MR. APPLEBY: The zoning affected all the property. All the property. Both on Medley and Turtle Creek. The zoning affected both parcels. We're looking at development plans for two different parcels. 8a is Creekview, which adjoins you. That's what we're working on.

MR. ALVEY: We did not discuss 8a and 8b before you all passed the motion.

MR. APPLEBY: 8a and 8b are development plans, preliminary subdivision plan. The zoning
affected a tract of ground which includes both of them.

MR. ALVEY: But the sound abatement blocking between the new Creekview road and the piece of property that adjoin that, you all are talking about trees there for sound abatement every 40 feet and that's what you asked him to agree upon; is that correct?

MR. CAMBRON: All I was speaking of is between the Turtle Creek Unit 1 and the property that we were rezoning at the time along that east side.

MR. ALVEY: East side of the creek?

MR. APPLEBY: The property that adjoins your property. That's where we've been asking him to put the trees.

MR. ALVEY: All right. We just feel that that's not sufficient I would say.

MR. CAMBRON: Okay.

CHAIRMAN: Yes, Mr. Inman, would you like to make another comment.

MR. INMAN: Yes, sir. I apologize. A lot of the folks that are here tonight, you all have alluded to it, it may be helpful that -- sometimes you have to decide when and where action needs to be taken. With the commission's permission I'd like to
make sure I can clarify what the next steps are
because not everyone has to go through this every day.
If they understand, they may know the concerns can be
voiced better at another time.

CHAIRMAN: Thank you Mr. Inman.

MR. INMAN: If I'm correct, you will refer
this to the city commission. The city commission will
then in approximately two to three weeks put it on
their agenda for one reading. No action will be taken
at that time. It will just be read into the public
record. Two weeks after that, then they will allow
for comments on the zoning, the zoning which has been
recommended because they have nothing to do with the
actual subdivision plats. They can take public
comment and they will vote on whether or not this will
actually be approved. Your commission is only merely
recommended that it fits within a plan that you didn't
really design.

CHAIRMAN: Mr. Noffsinger.

MR. INMAN: I apologize to belabor that,
but I think it's important for them to know so they
understand that this is not the last discussion where
they might be able to better discuss it.

MR. NOFFSINGER: I will attest to what Mr.
Inman said with the exception of the time frame. It
will probably be at least three weeks before we get this transcript back.

MS. STONE: The property is not annexed yet. Would it go to the county prior to the city annexing it?

MR. NOFFSINGER: It may. It may very well. It could.

MR. INMAN: So it could very well be two more stops on this whole improvement. At that time that's when factors such as land values or prior issues, things of that sort, may be a better forum to discuss those?

MR. CAMBRON: Right.

MR. INMAN: And no development will occur during that time?

MR. NOFFSINGER: Let me just say, keep in mind that we're dealing with two different types of applications here tonight.

First one, previous application, was a zoning change. It was a zoning change from agricultural to residential. That's a zoning change. That application will go before either the Daviess County Fiscal Court or if it's annexed it will go before the city commission. Then the legislative body, city or county, will take two readings on that
application. You will have an opportunity to voice your concerns about the rezoning to the city commission or the Daviess County Fiscal Court. You also have the opportunity to voice your concerns about improvements that haven't been completed or installed in that development to the city commission. I know this issue has been discussed since at least June. Maybe before that.

Todd, I know I've discussed this issue with you.

MR. INMAN: Yes.

MR. NOFFSINGER: You're very well aware of the process. I've also talked with Tracy Marksberry. She is very well aware of the process as well as Commissioner Al Mattingly. In fact, Planning Staff had a meeting back in June. Remember the day very well. It was June 19th. I couldn't attend that meeting. Had full intentions to, but there was a meeting on June 19th to discuss what to do in terms of improvements that were not completed in this development.

On June 25th, I believe Marwan issued a letter. Then they have until September to complete the improvements. I think that's going to be done. I think the city is going to follow through on it.
The zoning change we're considering the use of the land. The use of the land is for residential and that's the same use of the land that each of you enjoy on your properties. It's the same zoning classification.

Then you have the subdivision plat. The subdivision plats that we're considering tonight meet all of the requirements of the subdivision regulations and the zoning. The city engineer has signed off and approved all aspects of the improvements within this development.

This community has not adopted design guidelines. This community does not tell an individual what they're building, whether it be a commercial building or a residential structure, will look like. This community does not tell private land owners how large that building is going to be. It dictates, your development regulations dictate that you can't exceed a certain size, but there are no minimums.

So until this community adopts design guidelines and restrictions on the development that says you have to build a house of certain size in this development, we're going to have issues just like this. When you buy in an infant subdivision and you
have vacant fields around you, you have to anticipate some type of development is going to occur some day regardless of what you may or may not be told on the dates you go in and talk to a developer or sign a contract. Unless you have that in writing, it's fair game. I sympathize with each of you but, again, I want you to understand that this commission, I'm sure the city commission, they want to help you, but they can only go so far.

   Until this community is willing to step up and say we're going to actually review and have a say in what the development style and quality is of the buildings in our community, we're going to have these issues. I don't think from what I've heard and the city commission and Daviess County Fiscal Court and others, I don't think this community is ready for that. Now, some day in the future, they may, but I don't think they are today.

   MR. INMAN: And that's probably a much bigger picture than the issues that worries everybody tonight.

   Can we clarify then, based on the recommendation of the zoning change, and Mr. Wimsatt may want to clarify this, that until that zoning change is allowed, there will be no development on
that property?

MR. APPLEBY: He can get cut field permit tomorrow regardless of this zoning change and go out there and start moving dirt.

MR. NOFFSINGER: He can do that, but let me state that if this commission chooses to approve these next two items, 8a and 8b, the subdivision plats, which this body will take the final action on those two items, the subdivision plats. The plats will not go to the city commission or the Daviess County Fiscal Court. This body takes final action. Your appeal on those will be to circuit court. You have 30 days in which to appeal this commission's action on the subdivision plats to circuit court. I would recommend that you approve it with the condition that the zoning change on the property is granted or changed to R-1C by the legislative body. That would either be the city commission or the Daviess County Fiscal Court and that no building permits be issued until that zoning change is approved. We do issue building permits on preliminary subdivision plats. So I think that's why it would be important --

MR. APPLEBY: If it doesn't become R-1C, he can't do lots this size in A-U?

MR. NOFFSINGER: That's correct. Your
approval needs to be subject to the granting of the zoning that he's requesting to be conditioned upon it.

DR. BOTHWELL: Aren't we doing that in essence because if the zoning is not approved the plat is thrown out anyway.

MR. NOFFSINGER: Legal counsel may want to advise, but I would say no.

MR. ELLIOTT: I agree with that. Your question is: If they don't approve the --

DR. BOTHWELL: If we go ahead and approve A and B, no restrictions, it goes to fiscal court and they don't approve the zoning, the plats are worthless?

MR. ELLIOTT: That is correct, but I think what we're trying to do is not allow any development of this property until the zoning is finally approved. If you go ahead and approve this plat and they have objections to them, they have to file a petition in the circuit court. If you do it the other way, contingent on rezoning, that would hold that off until the rezoning actually occurs. Then they could take it all up at one time. They have a right to appeal that to circuit court after 30 days from the legislative body.

MR. JAGOE: Isn't the applicant or the
owner, the land owner able to develop the property as it's zoned?

MR. ELLIOTT: As it's zoned, yes.

MR. APPLEBY: So he could go in and move dirt tomorrow?

MR. NOFFSINGER: Not with these size lots.

MR. APPLEBY: He just couldn't subdivide lots off.

MR. ELLIOTT: Right.

MR. INMAN: If it's agricultural, I take it from your discussion, he could go and till his field?

MR. APPLEBY: He could make it one acre lots.

MR. INMAN: If that's the understanding, but no development --

MR. JAGOE: Technically he could dig the streets, dig the basins and do that, but he's doing it under an agricultural zone. If he came in here then to have a final plat put on the site, then without the proper zoning then he would not be able to have ten sites as they're configured here.

MR. NOFFSINGER: That's why you need to condition your approval on final action.

MR. JAGOE: But we can't stop, this body
cannot stop a - not to send the wrong message - an
individual the rights to develop their property under
the current zone that it's in.

MR. NOFFSINGER: That is correct.

MR. JAGOE: But it has to meet the
criteria of that zone.

MR. NOFFSINGER: That's right. These
plats do not meet the criteria for A-U.

MR. APPLEBY: But if he brought it back,
if he brought the same development back and he had the
minimum lot size for an A-U zone with that street in
there, it would meet the criteria.

MR. NOFFSINGER: It may very well, but
that's not the plan that's before you.

MR. APPLEBY: Right. But I'm saying he
could got out there and move -- we don't want these
people to think that he can't be doing work over
there.

MR. NOFFSINGER: No, I'm not saying that.

What I'm recommending is that you approve the plat
conditioned upon zoning -- no building permit is
being issued.

MR. JAGOE: I thought we did that anyhow.

MR. NOFFSINGER: No.

MR. INMAN: I think that would be
acceptable to a lot, and I don't want to speak for
everyone, acceptable to a lot of people here to know
that they have their voice heard in another venue to
where it's not held by the same rules that you all are
held by. Thank you for your time.

CHAIRMAN: Thank you, Mr. Inman.

DR. BOTHWELL: Mr. Chairman, are you ready
for a motion to that affect?

CHAIRMAN: Yes, sir.

DR. BOTHWELL: Can we bundle A and B
together under one motion?

CHAIRMAN: No, sir.

DR. BOTHWELL: Mr. Chairman, I make a
motion for approval of 8a subject to the zoning being
approved prior to any development or issuing of
building permits.

MR. APPLEBY: Second.

CHAIRMAN: Wait just a moment.

CHAIRMAN: Is that an appropriate motion,
Mr. Elliott?

MR. ELLIOTT: Any development -- I don't
know about that part of it.

CHAIRMAN: I just want to make sure we can
stand on what we're doing.

MR. ELLIOTT: I mean he can develop it as
DR. BOTHWELL: How about issuing a building permit? Mr. Noffsinger, how did you phrase it?

MR. NOFFSINGER: No building permits shall be issued.

DR. BOTHWELL: That is my motion.

MR. APPLEBY: That's my second.

CHAIRMAN: We've got a motion by Dr. Bothwell. Second by Mr. Appleby. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: This motion carries unanimously.

Next item, please.

ITEM 8b

4004, 4026, 4052, 4080, 4100, 4120 Medley Road, 967 Deer Haven Drive, 2.154 acres
Consider approval of major subdivision preliminary plat.
Applicant: Robert J. Wimsatt

MR. NOFFSINGER: Mr. Chairman, Planning Staff and Engineering Staff has reviewed this item. It is ready for consideration and we recommend that if it's approved it be approved subject to no building permits being issued until such time as the zoning change becomes final.
CHAIRMAN: I think everyone in the room has had a chance to say anything that they would like to say and the commission has heard from everyone. I think the commission has asked any questions that they have. I think it might be appropriate for simplicity means that Dr. Bothwell make another motion.

DR. BOTHWELL: I make the same motion for approval subject to no building permits be issued until the zoning has been approved.

MR. CAMBRON: May I ask a quick question real quick?

Mr. Noffsinger, do these lots all have entrances off onto Medley Road; is that correct?

MR. NOFFSINGER: Unfortunately, yes, that is the case.

MR. APPLEBY: But they have shared access points.

MR. CAMBRON: Right. So how many access points are there off of Medley Road? This thing is so shrinked down I can't tell.

MR. NOFFSINGER: I believe you're going to have three.

MR. CAMBRON: So there's going to be an access road and then three entrances?

MR. NOFFSINGER: No, sir. There will be
one, two, three entrances to Medley Road and you'll
have lots sharing, those two lots sharing an entrance.

CHAIRMAN: Does that satisfy your
question, Mr. Cambron?

MR. CAMBRON: It does.

CHAIRMAN: We're in the midst of a motion
by Dr. Bothwell.

MR. APPLEBY: Second.

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

(EIGHT COMMISSION MEMBERS - DAVE APPLEBY,
SCOTT JAGOE, IRVIN ROGERS, SISTER BOWLES, DREW
KIRKLAND, JUDY DIXON, DR. BOTHWELL AND MARTIN HAYDEN -
RESPONDED AYE.)

CHAIRMAN: All opposed.

(ONE COMMISSION MEMBER - NICK CAMBRON -
RESPONDED NAY.)

CHAIRMAN: We've got an eight to one
vote. The motion does carry.

Next item, please.

ITEM 9

3925 Ronnie Lake Road, 27.71 acres
Consider zoning change: From EX-1 Coal Mining and A-U
Urban Agriculture to A-U Urban Agriculture.
Applicant: Stephen and Chandra Ray

PLANNING STAFF RECOMMENDATIONS

Ohio Valley Reporting
(270) 683-7383
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:

Findings of Fact:

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 recommend the Staff Report be entered as Exhibit E.

CHAIRMAN: Thank you, Ms. Stone.

Is there anybody representing the applicant?

(NO RESPONSE)

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

CHAIRMAN: From the commission?

(NO RESPONSE)

MR. HAYDEN: Make motion for approval.

CHAIRMAN: Motion for approval by Mr. Hayden.

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.

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MAJOR SUBDIVISIONS

ITEM 10

The Brooks, 31.844 acres
Consider approval of revised major subdivision preliminary plat.
Applicant: Owensboro Master Builders, Inc.

MR. CHAIRMAN: This plat is in order and ready for consideration.

CHAIRMAN: Anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions?

(NO RESPONSE)

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

MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

Next item.

ITEM 11

Hialeah Park of Lakeside at the Downs, Unit #1, Lots 206A-220A, 14.699 acres
Consider approval of major subdivision final plat. Surety (Irrevocable Letter of Credit) posted: $94,598.40 Applicant: Thompson Homes, Inc.

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

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

SISTER VIVIAN: Second.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN:  Second by Sister Vivian.  All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries unanimously.

Next item, please.

ITEM 12

Lanewood Hills, 22.156 acres
Consider approval of major subdivision preliminary plat.
Applicant:  David Clark

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

CHAIRMAN:  Somebody representing the applicant?

APPLICANT:  Yes.

CHAIRMAN:  Any questions?

(NO RESPONSE)

CHAIRMAN:  Chair is ready for a motion.

MR. CAMBRON:  Motion for approval.

CHAIRMAN:  Motion for approval by Mr. Cambron.

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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MINOR SUBDIVISION

ITEM 13

10324, 10328 Main Street, 10323 Walnut Street, 0.28, 0.11, 0.34 acres
Consider approval of major/minor subdivision plat.
Applicant: Owen Kaysinger

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. I'm confused on it and will confer to Becky Stone.

CHAIRMAN: Ms. Stone.

MS. STONE: This is a piece of property that has three existing homes on it. The surveyor was starting to consolidate two pieces of property that he thought were existing lots of record on the tract. Our base map shows these property lines; however, the surveyor was not able to determine through his research into the records that these were existing lots of record. It appear that they were created after 1977; although they've been taxed separately for some time and under separate ownership for some time.

What they're proposing to do is create these lots as they were identified previously to include a house on each tract. They meet the
requirements in R-1A for the minimum lot size, but they're deficient in the lot frontage. They're about 62 feet of frontage rather than the 75 feet. They are improving the situation by attempting to consolidate a piece that although there's no plat on it, it is taxed separately and they're consolidating that to one of the properties with frontage so that that piece is no longer land-locked. So there's some evidence that these may have been existing lots of record, but it can't be documented in research. We would support approving this plat. It ends up with a house on each of the three separate tracts.

CHAIRMAN: Thank you, Ms. Stone.

Any questions from the commission or the audience?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

SISTER VIVIAN: Second.

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

CHAIRMAN: Motion carries unanimously.

Thank you.

SURETY RELEASES

ITEM 14

Audubon Dental, $2,645.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Hagan Construction Co.

ITEM 15

Covington Ridge, Section 2, $5,000.00
Consider release of surety (Certificate of Deposit) for fire hydrants.
Surety posted by: Ballard Development, LLP

ITEM 16

Covington Ridge, Section 2, $14,033.44
Consider partial release of surety (Certificate of Deposit) for streets.
Surety retained (Certificate of Deposit) $6,799.20
Surety posted by: Ballard Development, LLP

ITEM 16a

Covington Ridge, Section 2, $2,000.00
Consider partial release of surety (Certificate of Deposit) for storm sewers and drainage.
Surety retained (Certificate of Deposit) $4,256.50
Surety posted by: Ballard Development, LLP

ITEM 17

Cross Creek, Unit #1, $10,990.00
Consider release of surety (Certificate of Deposit) 2" Bitum Conc. Base
Surety posted by: Pedley Developers, LLC

ITEM 18

Cross Creek, Unit #1, $1,946.00
Consider release of surety (Certificate of Deposit)

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for 6" DGA.
Surety posted by: Pedley Developers, LLC

ITEM 19

Thomas and Carol Hulsey, LLC, $1,320.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Thomas and Carol Hulsey

ITEM 20

Kentucky Wesleyan Campus Community Center, $5,242.50
Consider release of surety (Irrevocable Letter of Credit) for landscaping.
Surety posted by: Kentucky Wesleyan College

ITEM 21

Lake Forest, Unit #7, $16,500.00
Consider release of surety (Certificate of Deposit) for deceleration lane.
Surety posted by: JMP/Lake Forest, Inc.

ITEM 22

New Dollar Tree, $4,788.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: U.S. Industries Group, Inc.

ITEM 23

The North Landings of Heartland, Phase 1, $13,700.40
Consider release of surety (Certificate of Deposit) for 2" Bit. Conc. Base
Surety posted by: Jagoe Homes and Construction Co., Inc.

ITEM 24

The North Landings of Heartland, Phase 1, $5,700.00
Consider release of surety (Certificate of Deposit) for fire hydrants.
Surety posted by: Jagoe Homes and Construction Co., Inc.

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ITEM 25

The North Landings of Heartland, Phase 1, $10,916.00
Consider release of surety (Certificate of Deposit) for water mains.
Surety posted by: Jagoe Homes and Construction Co, Inc.

ITEM 26

135 Salem Drive (REMODEL) $2,500.00
Consider release of surety (Certificate of Deposit) for landscaping.
Surety posted by: Kenneth Crandall

MR. NOFFSINGER: Mr. Chairman, under Surety Releases Items 14 through 26 are in order and may be released in toto.

MR. JAGOE: Mr. Chairman, I need to disqualify myself on Items 23 through 25.

CHAIRMAN: It will be noted that Mr. Jagoe is disqualifying himself on Items 23 through 25.

MR. JAGOE: Yes.

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

MR. CAMBRON: Make a motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT - WITH THE Ohio Valley Reporting
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DISQUALIFICATION OF SCOTT JAGOE ON ITEMS 23 THROUGH 25
- RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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SURETY TRANSFERS

ITEM 27

The Greens of Heartland, Unit #4, $13,068.00
Transfer of surety (Certificate of Deposit) for sidewalks to the City of Owensboro
Surety posted by: Jagoe Homes and Construction Co., Inc.

ITEM 28

The Greens of Heartland, Unit #4, $5,986.40
Transfer of surety (Certificate of Deposit) for 1" Bit. Conc. Surface to the City of Owensboro.
Surety posted by: Jagoe Homes and Construction, Inc.

ITEM 29

Woodcrest, Unit #3, $8,820.00
Transfer of surety (Certificate of Deposit) for streets to the Daviess County Fiscal Court
Surety posted by: J.D. Wells Builders, Inc.

MR. NOFFSINGER: Under Surety Transfers,

Items 27 through 29 are in order and may be
transferred in toto.

MR. JAGOE: Mr. Chairman, I need to

disqualify myself on 27 and 28.

CHAIRMAN: Let the record be noted Mr.

Jagoe is disqualifying himself on 27 and 28.

SISTER VIVIAN: Move for approval.

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CHAIRMAN: Motion for approval by Sister Vivian.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF SCOTT JAGOE ON ITEMS 27 AND 28 - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

NEW BUSINESS

ITEM 30

6120 Old KY 54, 4223 KY 142
Land Disposition and Acquisition
Consider comments regarding the transfer of 0.158 acres of property from the Daviess County Board of Education to the Southeast Daviess County Water District.
Referred by: Daviess County Board of Education, Southeast Daviess County Water District

MR. NOFFSINGER: Mr. Chairman, I apologize for this item being the last item on the agenda. It was submitted to us late. However, in order to facilitate this transfer between of the board of education and the water district, we did place it on the agenda. We've reviewed it. We find no conflict with the plan and recommend you forward a letter to that affect to both entities.

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CHAIRMAN: Thank you, Mr. Noffsinger.

Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

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.

The chair is ready for one final motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion to adjourn by Ms. Dixon.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER, 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 96 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 1st day of October, 2003.

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

COMMISSION EXPIRES: DECEMBER 19, 2006

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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