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OWENSBORO METROPOLITAN PLANNING COMMISSION

MARCH 11, 2004

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The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, March 11, 2004, 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: Good evening. I would like to welcome everybody to the Owensboro Metropolitan Planning & Zoning meeting tonight. Our invocation will be given by Mr. Dave Appleby.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first order of business is consider the minutes of February 12, 2004 meeting. Are there any questions or corrections?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a

1 motion.

2 MR. JAGOE: Move to approve.

3 CHAIRMAN: Motion for approval by Mr.  
4 Jagoe.

5 SISTER VIVIAN: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.  
10 Mr. Noffsinger.

11 -----

12 PUBLIC FACILITIES PLANS  
13 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

14 ITEM 2

15 2815 South Griffith Avenue  
16 Facilities Construction  
17 Consider comments regarding the construction of a new  
18 parking area at the Southern Little League field.  
19 Referred by: City of Owensboro

20 MR. NOFFSINGER: Mr. Chairman, the  
21 Planning Staff we have reviewed this application. We  
22 find no conflict with the Comprehensive Plan. Much  
23 needed parking at that facility. There's been a  
24 number of situations where vehicles have been parked  
25 on the street. This should help to curb that  
situation.

We do recommend that should this parking

1 lot be constructed it be landscaped as per the zoning  
2 ordinance and any lighting be directed away from the  
3 adjoining residential properties.

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

6 Yes, ma'am. Do you have a statement you'd  
7 like to make, Ms. Sturgeon?

8 MS. STURGEON: No, sir, I don't. I think  
9 Gary has - -

10 CHAIRMAN: Wait.

11 MR. ELLIOTT: State your name, please.

12 MS. STURGEON: Cindy Sturgeon. I'm the  
13 director of Parks & Recreation.

14 (MS. CINDY STURGEON SWORN BY ATTORNEY.)

15 MS. STURGEON: As Gary mentioned, this is  
16 a needed parking area. Southern Little League  
17 developed a third diamond there a couple of years ago.  
18 Due to the demand and the complaints we have received  
19 from the neighbors, we'd like to submit this  
20 application to develop new parking.

21 CHAIRMAN: It's probably had a lot to do  
22 with the success in the last couple of years, don't  
23 you think?

24 MS. STURGEON: Absolutely.

25 CHAIRMAN: Are they recruiting any more

1 left-hand fire ball pitchers?

2 MS. STURGEON: They have the best.

3 CHAIRMAN: Are there any more questions of  
4 Ms. Sturgeon other than player or any other questions  
5 about the situation?

6 (NO RESPONSE)

7 CHAIRMAN: Does anybody on the commission  
8 have any questions?

9 (NO RESPONSE)

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

12 DR. BOTHWELL: Motion for approval.

13 CHAIRMAN: Motion for approval by Dr.  
14 Bothwell.

15 MR. CAMBRON: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 3

22 1817 Leitchfield Road  
23 Land Acquisition and Disposition  
24 Consider comments regarding the acquisition of land by  
25 the City of Owensboro and the disposition of land by  
the Owensboro Independent School System to be  
dedicated as right-of-way for the purpose of  
improvement to Leitchfield Road.

1 Referred by: City of Owensboro, Owensboro Independent  
2 School System

3 MR. NOFFSINGER: Mr. Chairman, the  
4 Planning Staff has reviewed this application. We find  
5 no conflict with the adopted comprehensive plan.

6 This project is being done to soften a  
7 curve on Leitchfield Road there at the intersection of  
8 18th Street. With that it's ready for your  
9 consideration.

10 CHAIRMAN: Is there anybody representing  
11 the applicant?

12 (NO RESPONSE)

13 CHAIRMAN: Does anybody in the audience  
14 have any questions?

15 (NO RESPONSE)

16 CHAIRMAN: Does anybody on the commission  
17 have any questions?

18 (NO RESPONSE)

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

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

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

25 MS. DIXON: Second.

1                   CHAIRMAN: Second by Judy Dixon. All in  
2 favor raise your right hand.

3                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4                   CHAIRMAN: Motion carries unanimously.

5                   Next item.

6                   ITEM 4

7                   Horse Fork Trail of Greenbelt Park  
8                   Bridge Construction

9                   Consider comments regarding the construction of a  
10                  pedestrian bridge to connect the Greenbelt Park Trail  
11                  through the Heartland Development to the main branch  
12                  of the Horse Fork Trail.

13                  Referred by: City of Owensboro

14                  MR. NOFFSINGER: Mr. Chairman, Planning  
15                  Staff reviewed this application. We find no conflict  
16                  with the Comprehensive Plan. Recommend we forward a  
17                  letter to that affect to the City of Owensboro.

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

20                  (NO RESPONSE)

21                  CHAIRMAN: Are there any questions?

22                  (NO RESPONSE)

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

25                  MR. APPLEBY: Motion for approval.

                  CHAIRMAN: Motion for approval by Mr.  
                  Appleby.

                  MR. ROGERS: Second.

1 CHAIRMAN: Second by Mr. Rogers. All in  
2 favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 -----

7 ZONING CHANGE - CITY

8 ITEM 5

9 712, 720 West Fifth Street, 0.15 acres  
10 Consider zoning change: From B-4 General Business  
11 to R-4DT Inner-City Residential.  
12 Applicant: H&K Property Management, LLC

13 MR. ELLIOTT: State your name, please.

14 MS. STONE: Becky Stone.

15 (MS. BECKY STONE SWORN BY ATTORNEY.)

16 PLANNING STAFF RECOMMENDATIONS

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

22 Conditions:

- 23 1. Consolidation of the two lots of record into
- 24 one lot meeting the minimum requirements of the R-4DT
- 25 zone; and,
- 2. Access shall be limited to a single access

1 point to West Fifth Street.

2 Findings of Fact:

3 1. The subject property is partially located in  
4 a Central Residential Plan Area, where urban  
5 mid-density residential uses are appropriate in  
6 general locations;

7 2. The subject property is partially located in  
8 a Business Plan Area, where urban mid-density  
9 residential uses are appropriate in limited locations;

10 3. The subject property is adjacent to existing  
11 R-4DT Inner-City Residential zoning; and,

12 4. The applicant's proposal is a logical  
13 expansion of existing R-4DT zoning that exists in the  
14 immediate vicinity.

15 MS. STONE: We'd like the Staff Report  
16 entered as Exhibit A into the record.

17 CHAIRMAN: Is there anybody here  
18 representing the applicant?

19 APPLICANT REP: Yes.

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

22 (NO RESPONSE)

23 CHAIRMAN: Anybody on the commission?

24 (NO RESPONSE)

25 CHAIRMAN: If not the chair is ready for a



1 motion.

2 MS. DIXON: Move to approve subject to  
3 Conditions 1 and 2 and based upon Findings of Fact 1  
4 through 4.

5 CHAIRMAN: Motion for approval by Ms.  
6 Dixon.

7 MR. CAMBRON: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 -----

14 ZONING CHANGES - COUNTY

15 ITEM 6

16 5635 KY 54, 2.04 acres  
17 Consider zoning change: From R-1A Single-Family  
18 Residential to B-4 General Business  
19 Applicant: Don Howard, Stephen Hardesty

19 PLANNING STAFF RECOMMENDATIONS

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

25 Condition:

1           1. Installation of landscape easements and  
2 screening in accordance with the Owensboro  
3 Metropolitan Zoning Ordinance requirements; and

4           2. Provide screening in accordance with the  
5 Owensboro Metropolitan Zoning Ordinance requirements  
6 for any outdoor storage areas to be located on the  
7 subject property.

8 Findings of Fact:

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

12           2. The subject property adjoins B-4 General  
13 Business zoning and uses located on KY 54, and,

14           3. The applicant's proposal is a logical  
15 expansion of existing B-4 General Business zoning that  
16 will not significantly increase the extent of B-4  
17 General Business zoning in the vicinity and will not  
18 overburden the capacity of roadways or other necessary  
19 services located in the affected area.

20           MS. STONE: We'd like the Staff Report  
21 entered as Exhibit B.

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

24           (NO RESPONSE)

25           CHAIRMAN: Does anybody in the audience

1 have any questions?

2 (NO RESPONSE)

3 CHAIRMAN: Anybody on the commission?

4 (NO RESPONSE)

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

7 DR. BOTHWELL: Motion for approval.

8 CHAIRMAN: Motion for approval by Dr.  
9 Bothwell.

10 MS. DIXON: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

16 ITEM 7

17 2300 Block Village Run, 2.960 acres  
18 Consider zoning change: From R-3MF Multi-Family  
19 Residential to R-1C Single-Family Residential  
20 Applicant: Jagoe Development, LLC, National City  
21 Bank, KY

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

24 CHAIRMAN: Let the record note that Mr.  
25 Jagoe has disqualified himself, please.

26 PLANNING STAFF RECOMMENDATIONS

27 Staff recommends approval because the proposal is

1 in compliance with the community's adopted  
2 Comprehensive Plan. Findings of Fact in support of  
3 this recommendation follow:

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

7 2. The subject property is adjacent to R-1C  
8 Single-Family Residential zoning to the north and to  
9 the west across Byers Avenue; and

10 3. Sanitary sewers are immediately available to  
11 the site.

12 MS. STONE: We'd like the Staff Report  
13 entered as Exhibit C.

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

16 APPLICANT REP: Yes.

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

19 (NO RESPONSE)

20 CHAIRMAN: Does anybody on the commission  
21 have a question?

22 MR. CAMBRON: Is chair ready for a motion?

23 CHAIRMAN: Chair is ready for a motion.

24 MR. CAMBRON: Motion for approval based  
25 upon Planning Staff Recommendations 1 through 3.

1 CHAIRMAN: Motion for approval by Mr.  
2 Cambron.

3 MS. DIXON: Second.

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

6 (ALL BOARD MEMBERS PRESENT - WITH THE  
7 DISQUALIFICATION OF MR. JAGOE - RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item, please.

10 -----

11 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISION

12 ITEM 8

13 3123, 3151 KY 54, 3441, 3509 Fairview Drive, 24.58  
14 acres

15 Consider approval of major subdivision preliminary  
16 plat/final development plan.

17 Applicant: Site, Inc., Denney Development, Constance  
Eppereson, John G. Conway, Jr., Forrest D. Hagan,  
18 William F. & Clara M. Lyninger, ABBS Partnership,  
19 Industrial Leasing Corporation of Florida

20 MR. NOFFSINGER: Mr. Chairman, the  
21 applicant has delivered a letter to the Planning Staff  
22 asking that this item be postponed. They would like  
23 to request the Planning Commission to review and be  
24 postponed until the April 15, 2004 meeting. "We'd  
25 like to make sure that we have adequately addressed  
the engineering department's comments before appearing  
at the Planning Commission meeting."



1 MR. NOFFSINGER: Mr. Chairman, this plan  
2 has been reviewed by the Planning Staff and the City  
3 of Whitesville's contract engineer. It's found to be  
4 in order and ready for consideration.

5 CHAIRMAN: Is anybody here representing  
6 the applicant?

7 (NO RESPONSE)

8 CHAIRMAN: Does anybody have a question of  
9 the applicant?

10 (NO RESPONSE)

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

13 MR. ROGERS: Mr. Chairman, I make a motion  
14 for approval.

15 CHAIRMAN: Motion for approval by Mr.  
16 Rogers.

17 MR. HAYDEN: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 ITEM 10

23 3801 Legacy Run, 2.032 acres  
24 Consider approval of amended final development plan.  
25 Applicant: Franklin J. & Susan J. Dockery

MR. NOFFSINGER: Mr. Chairman, this plan

1 has been reviewed by the Planning Staff and  
2 Engineering Staff. Found to be in order and ready for  
3 consideration.

4 CHAIRMAN: Is anybody here representing  
5 the applicant?

6 APPLICANT REP: Yes.

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

9 (NO RESPONSE)

10 CHAIRMAN: Does anybody on the commission?

11 (NO RESPONSE)

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

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

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

18 MS. DIXON: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 ITEM 11

24 811 East Parrish Avenue, 1325 Triplett Street, 1215,  
25 1219, 1309 Pearl Street, 32.344 acres  
Consider approval of final development plan.



1 Applicant: Owensboro Medical Health System

2 MR. NOFFSINGER: Mr. Chairman, this is an  
3 amendment to a previously approved development plan.  
4 It is for the Cancer Center at the Owensboro Medical  
5 Health System. It changes the location of their main  
6 access point off of Breckenridge Street. It moves it  
7 closer to the intersection of Parrish Avenue; however,  
8 the applicant has agreed, I believe, there's a  
9 statement on the plat that there will be only one  
10 access point to Breckenridge Street, which previously  
11 this commission had approved on various plats and  
12 plans that there would be one access point to  
13 Breckenridge and one only. The applicant has  
14 committed to that; however, they feel the location of  
15 their driveway needs to be moved to open up and  
16 provide visibility to the emergency room which is very  
17 important to the hospital and for the construction of  
18 the cancer facility.

19 Planning Staff has reviewed the  
20 application. Found to be in order. Would recommend  
21 approval subject to the installation of a left turn  
22 decel and storage lane on Breckenridge to this main  
23 entrance.

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

1 APPLICANT REP: Yes.

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

4 (NO RESPONSE)

5 CHAIRMAN: Does anybody on the commission?

6 (NO RESPONSE)

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

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

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

13 DR. BOTHWELL: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Thank you.

19 ITEM 12

20 3101 West Second Street, 4.399 acres  
21 Consider status of approval of amended final  
22 development plan.  
23 Applicant: Owensboro-Daviess County Humane Society,  
24 Carmel Simmons

25 MR. NOFFSINGER: Mr. Chairman, this  
development plan was approved by the Planning  
Commission on January 8th of 2004. There is a

1 question that has been raised as to the ownership of  
2 the property. This was referred to our attorney Mr.  
3 Stewart Elliott. Stewart Elliott recommended that the  
4 item be placed on the Planning Commission agenda. So  
5 with that I will turn it over to Mr. Elliott.

6 MR. ELLIOTT: We approved the final  
7 development plan for the property located at 3101 West  
8 Second Street. It was dated 12/8/03. I think Gary  
9 said we approved it in our January meeting. The  
10 Planning Commission has received a letter from Charles  
11 Lamar who is representing Ronald Simmons who he has  
12 given a deed saying he is a part owner of this  
13 property. He did not - - he says in that letter that  
14 he did not approve the submission of this final  
15 development plan for approval. We require that the -  
16 - there's a certificate of ownership on the final  
17 development plan. So since this has been contested,  
18 they have requested that we void or vacate or set  
19 aside the final development plan. So I put it on  
20 tonight's agenda.

21 Of course, we as commissioners are not the  
22 ones that determine the ownership of property, but  
23 I've asked all parties to be here to state their  
24 position on this particular item. It appears that  
25 this is jointly owned property and the parties that

1 own this property there's some dispute as to this  
2 final development plan. So I've asked all of them to  
3 be here and to state their position.

4 It would be my recommendation that this  
5 matter be postponed with directions that the planning  
6 office issue no building permits or any permits for  
7 development of this property until the ownership issue  
8 is resolved between the parties.

9 CHAIRMAN: Mr. Elliott, could the  
10 ownership dispute last longer than the 30 day  
11 postponement until the next meeting?

12 MR. ELLIOTT: It probably could. I don't  
13 know how long it will last. I'll let the parties  
14 address that.

15 DR. BOTHWELL: Is the ownership, have you  
16 looked at it?

17 MR. ELLIOTT: Yes, and I'll submit a copy  
18 of Mr. Lamar's letter and a copy of an Affidavit of  
19 Ronald Simmons stating that he did not give approval  
20 for the submission of this development plan, and also  
21 a copy of the deed. I'll submit that into the record  
22 as a part of this.

23 DR. BOTHWELL: The complainant is indeed  
24 one of the owners. Do we know that for certain?

25 MR. ELLIOTT: Yes. Jointly owned

1 property, yes.

2 CHAIRMAN: One other question, Mr.  
3 Elliott. If the property dispute goes on longer than  
4 the 30 days, longer than the postponement, what  
5 situation will that put the commission in when they -  
6 -

7 MR. ELLIOTT: The commission would  
8 probably have to at that time void the development  
9 plan and let them get their ownership resolved and  
10 resubmit it.

11 CHAIRMAN: Then would that put them on  
12 like the sixth month delay until they could reapply?

13 MR. ELLIOTT: I don't think in this  
14 situation where - - I think that we can probably go  
15 ahead and consider it, but I think we ought to just  
16 postpone it for 30 days.

17 MR. APPLEBY: There's no dead line, no  
18 time limit on development plan.

19 MR. ELLIOTT: I don't think so.

20 MR. CAMBRON: So are they here tonight to  
21 speak to us about what their thoughts are even though  
22 we're going to postpone?

23 MR. ELLIOTT: Yes. Well, I'm recommending  
24 that. You can go ahead, if you wanted to, and you can  
25 reject and void the development plan. I think the

1 parties are all here. They probably want to address  
2 the commission.

3 CHAIRMAN: Mr. Elliott, what I think I  
4 might do is I might let each party make a statement,  
5 since they are here, and then if anybody on the  
6 commission or anybody in the audience has questions  
7 then they can answer those questions, but I think  
8 maybe a five minute statement by each party since  
9 we're going to postpone it.

10 Who are the two representing attorneys?

11 MS. ENGLEBERT: Candy Englebert  
12 representing Carmel Simmons.

13 CHAIRMAN: Would you go to the podium,  
14 please?

15 MR. ELLIOTT: State your name, please.

16 MS. ENGLEBERT: Candy Yarbray Englebert.

17 (MS. CANDY ENGLEBERT SWORN BY ATTORNEY.)

18 CHAIRMAN: Ms. Englebert, let me ask one  
19 question. Would the five minute statement be  
20 agreeable to you?

21 MS. ENGLEBERT: Yes, sir.

22 CHAIRMAN: Would you sit down, please.

23 Mr. Lamar, would you step to the podium,  
24 please.

25 MR. ELLIOTT: State your name, please.

1 MR. LAMAR: Charles Lamar representing Ron  
2 Simmons.

3 (MR. CHARLES LAMAR SWORN BY ATTORNEY.)

4 CHAIRMAN: Mr. Lamar, would five minutes  
5 to make a statement - -

6 MR. LAMAR: Far less than that.

7 CHAIRMAN: Thank you. That was the right  
8 answer. Please be seated.

9 CHAIRMAN: Ms. Yarbray, I think since  
10 you're the female, we'll let you go first. Make a  
11 five minutes statement, please.

12 MS. ENGLEBERT: It's difficult for me to  
13 limit my comments to five minutes, but I will do so.

14 Commission members, I appreciate the  
15 opportunity to be given to us to speak today. Believe  
16 me, and on behalf of my client Carmel Simmons, we  
17 don't want to have to be here today.

18 Carmel Simmons did not try to mislead  
19 anyone in any way in getting approval of the plan for  
20 the Humane Society. This is not the proper forum to  
21 dispute Mr. Simmons' allegations that he had no  
22 knowledge of that. We will do that in the divorce  
23 proceeding. There is a divorce proceeding pending and  
24 we will be litigating that in the divorce proceeding.

25 I do have people here today that can

1       refute Mr. Simmons' Affidavit that he had no  
2       knowledge.  Furthermore, Mr. Simmons approved on the  
3       same day a deed of easement to Regional Water Resource  
4       Agency on this particular piece of property because he  
5       knew what the plans were for the Humane Society.  He  
6       did not sign the plan due to the fact that my client,  
7       Carmel Simmons, was not aware of the fact that she had  
8       to get his signature on the plan for approval.  There  
9       was not a place for a notary to sign, but when she was  
10      presented with a deed of easement that has been signed  
11      by both she and Mr. Simmons, and I have copies for  
12      each member here today, she was told she had to get  
13      Mr. Simmons' signature before a notary and that was  
14      accomplished.  Again, I might add the same day that he  
15      signed or that she signed the plan of approval and  
16      that he saw the plan that was submitted and approved  
17      by this commission on January 8th of 2004.

18                   Obviously, we do not want to do anything  
19      against this commission to prevent this commission or  
20      to have any public outcry of what this commission  
21      does.  I do want to reiterate the fact that Carmel  
22      Simmons did not attempt in any way to mislead on an  
23      intentional basis.

24                   We do believe that the matter can be  
25      resolved or will be resolved obviously one way or the



1 other when this matter is finally litigated in Daviess  
2 Circuit Court in the divorce action.

3 We have no objection whatsoever to  
4 obviously that occurring before the plan is finished;  
5 however, we would request that you not revoke or  
6 rescind the plan at this time. That we resolve the  
7 issue in Daviess Circuit Court before you revoke or  
8 rescind. At that point obviously if the circuit court  
9 does not agree with Carmel Simmons that she receives  
10 the property, then obviously some further steps for  
11 the Owensboro Humane Society will have to take place.

12 Again, I reiterate Mr. Simmons knew about  
13 the plans for the Humane Society. His business is on  
14 the front section of this property and he sees it  
15 every day. He knew what was going on. He helped and  
16 assisted in getting the sewer implemented, the actual  
17 piping. He picked it up. He assisted. He provided  
18 tools for it to be done. He approved the deed of  
19 easement. The reason that the deed of easement was  
20 signed is for this very reason, and that is for the  
21 Humane Society. Thank you.

22 MR. CAMBRON: How quick before you all go  
23 to court on this matter?

24 MS. ENGLEBERT: We previously had our  
25 first hearing on January 22nd of 2004. We had it for

1 all day. We anticipated finishing that day. We have  
2 not. So we are rescheduled for April 22nd. We have a  
3 hearing set on this issue for the commissioner on  
4 March 30th. If you wish to see the deed of easement,  
5 I will be glad to provide a copy of the deed of  
6 easement signed by Mr. Simmons.

7 CHAIRMAN: Ms. Yarbray, why don't you hand  
8 those out and I'll bring Mr. Lamar to the podium.

9 Mr. Lamar.

10 MR. LAMAR: We are representing Ron  
11 Simmons because he learned for the first time after  
12 this commission that acted on the final development  
13 plan that this had been submitted. He had no  
14 knowledge of it whatsoever and is totally opposed to  
15 it.

16 The plan has a lot of objectionable things  
17 to it. No need to get in to why he's opposed to it,  
18 but I think that anyone here who's a property owner  
19 immediately recognizes that they don't want the  
20 commission acting upon a plan for their property  
21 without their knowledge or consent. There's no  
22 question that he did not do that. I have a copy of  
23 the plat that I understand was approved, the amended  
24 development plan drawing. It clearly says on the  
25 certification, which the law requires, that Carmel

1 Simmons signed the owner's signature on December 18 or  
2 dated it December 18. Mrs. Stone witnessed it. I'm  
3 sure she had no knowledge of the ownership. I don't  
4 know that the commission undertakes on its own to make  
5 any independent investigation of ownership. Mrs.  
6 Simmons certified that she's the only owner of the  
7 property shown here on it and adopts this as her  
8 development plan. This is false. You have the  
9 deed. He said that there was a question about or a  
10 dispute about ownership. There's no dispute about  
11 ownership. The property is deeded to the two of them  
12 as joint tenants with right of survivorship. That's  
13 the way it is. There's no question about that.  
14 There's no way that this action could be valid. So we  
15 stop right there as far as his knowledge of consent  
16 unless there's questions.

17 CHAIRMAN: Is that the end of your  
18 statement, Mr. Lamar?

19 MR. LAMAR: I guess I would say one other  
20 thing as far as postponing. There's no benefit in  
21 postponing for 30 days because nothing is going to  
22 happen in the other proceeding for much longer than  
23 that. The next hearing date, as she said, is well  
24 after your April meeting of this commission. That  
25 will not resolve anything at that time. It may not

1 even be concluded at that time. This is property  
2 where Mr. Simmons owns and operates his business,  
3 Simmons Wholesale Florists, Inc. This development  
4 plan does not need to be on this property. It should  
5 not be on it. I think that no one on this commission,  
6 if we were here, if we had known about it and could  
7 have been here at the time that you considered it  
8 before, there's certainly not a person on this  
9 commission that would have considered adopting a  
10 development plan over the objection of the owner of  
11 the property.

12 CHAIRMAN: Are you completed?

13 MR. LAMAR: Yes.

14 CHAIRMAN: Is there anybody here  
15 representing the Humane Society by chance?

16 MS. SIMMONS: Yes.

17 CHAIRMAN: Let me ask you if you'd step to  
18 the podium.

19 MR. ELLIOTT: State your name, please.

20 MS. SIMMONS: Carmel Simmons. I'm the  
21 director.

22 (MS. CARMEL SIMMONS SWORN BY ATTORNEY.)

23 CHAIRMAN: I would like you not to make a  
24 statement in regards to the dispute. I'd like you to  
25 speak, if you would speak on behalf of the Humane

1 Society involving this issue.

2 MS. SIMMONS: We were in quandary as we  
3 were kicked off the last piece of property or we  
4 left. We were in the middle of getting the Hill  
5 Bridge property. I don't know if any of you all saw  
6 the articles and so forth. The city and the county  
7 decided to put that up for auction. Of course, the  
8 Humane Society couldn't stay, but in the meanwhile we  
9 were down at Simmons Wholesale on our property. We  
10 have been running the Humane Society for over a year  
11 at this property. We have nowhere to go. Since the,  
12 this is embarrassing, but I have to bring this up, but  
13 since the divorce basically it was understood that we  
14 were okay to go ahead and stay there because of the  
15 outcome would be that I would buy out all the property  
16 and he would leave.

17 In the mean while, from the Humane  
18 Society's point of view, we have laid concrete. We  
19 have added bricks and mortar and we have added rock.  
20 We have built, the vocational school has built a 12 by  
21 24 building to be put on, which this development plan  
22 is all about. It's a very small building. It's very  
23 little. They have been operating there for over a  
24 year. This is not something that's new. I mean we've  
25 been in the paper. We've been interviewed. Ronnie is

1       there every day.

2                       From the Humane Society's point of view,  
3       but I have to bring up my side also, we are operating  
4       there.  It's not a surprise.  We've been there.  This  
5       is a slow developing - - we've laid over 30 yards of  
6       concrete there already.  It's not like something isn't  
7       new that didn't need to go through Planning & Zoning.  
8       We had a building sitting down there for a long time  
9       waiting to be okayed by the Planning & Zoning and it  
10      was approved.  This isn't a surprise.  It's a 12 by 24  
11     building that's sitting and waiting to get hooked up.  
12     It's not a surprise and we have nowhere to go.  
13     Unfortunately, I had to bring it to the public  
14     spectrum here, but it is - - I'm lost for words.

15                   CHAIRMAN:  Thank you.  There are obviously  
16     animals on the - -

17                   MS. SIMMONS:  We have been operating now  
18     and very successfully for over a year and hope to for  
19     many years to come.

20                   CHAIRMAN:  Thank you.

21                   Does anybody in the audience by chance  
22     have a question of the applicant?

23                   MR. CAMBRON:  Is chair ready for a motion,  
24     Mr. Chairman?

25                   CHAIRMAN:  Mr. Cambron.

1                   MR. CAMBRON: I'd like to make a motion to  
2 postpone - -

3                   MR. LAMAR: Could I have the opportunity  
4 to respond to correct some of the factual statements  
5 that were made?

6                   CHAIRMAN: Mr. Lamar, at the present time  
7 we were just accepting two different comments, her's  
8 and yours, but I'll be glad. Go ahead. Go ahead.

9                   MR. LAMAR: The only thing I wanted to say  
10 is that it is true that the Humane Society is  
11 operating down there in that neighborhood, but the  
12 Humane Society has its kennels on an adjoining piece  
13 of property. Not on this property. The only thing  
14 that's on this property that belongs to the Humane  
15 Society, which we hope to have moved soon, is a couple  
16 of the very small temporary buildings that are on  
17 skids that just need to be dragged off the property.  
18 I thought the commission might not have understood  
19 that.

20                   CHAIRMAN: The commission, as Mr. Elliott  
21 very well stated, you know, we do not determine  
22 ownership. We just wanted to get - - I thought it  
23 would be fair to get a statement from you all and get  
24 a statement from the Humane Society and get a  
25 statement from the Simmons' attorney, Ms. Yarbray, to

1 get it all, so we'd at least have an overview of  
2 what's going on. We're not going to try - -

3 MR. LAMAR: There is no dispute of  
4 ownership. The deed is of record.

5 CHAIRMAN: That's not really what we're  
6 here to decide. We're just looking at the development  
7 situation.

8 MR. LAMAR: You can adopt a development  
9 plan if you don't have the consent and approval of the  
10 ownership.

11 DR. BOTHWELL: We know that.

12 CHAIRMAN: Yes. We're going to follow  
13 through with what we have to do whether we approve it,  
14 postpone it, or disapprove the plan. Those are the  
15 three options this commission has.

16 MR. ELLIOTT: Mr. Chairman, I think at  
17 this point, since there seems to be no dispute as to  
18 ownership, my recommendation to postpone it I don't  
19 think is appropriate. Probably this matter should be,  
20 the development plan should be voided or set aside and  
21 let them resubmit it once they get their problems  
22 resolved. I was thinking a postponement, the parties  
23 may get together and may be able to resolve it by the  
24 next meeting and be able to, you know, compromise the  
25 situation, but it appears that there is no dispute



1 about ownership. Both parties own it and both owners  
2 did not sign the final development plan. So I don't  
3 think we have any choice but to vacate it and set it  
4 aside. I think a postponement would probably be, at  
5 this point with a divorce pending, probably wouldn't  
6 be resolved in 30 days.

7 MR. JAGOE: Mr. Chairman, if I could ask  
8 counsel a question.

9 CHAIRMAN: Absolutely.

10 MR. JAGOE: If a plat has to be submitted  
11 with an owner certification on it to be valid?

12 MR. ELLIOTT: Yes.

13 MR. JAGOE: So then this plat is not  
14 valid.

15 MR. ELLIOTT: Right. Since there is no  
16 dispute as to ownership, both parties own it and one  
17 of the owners says, I do not want this approved. So  
18 it kind of puts limitations on what we can do.

19 MR. CAMBRON: Postponement is not going to  
20 do anything at this point in time.

21 MR. ELLIOTT: Not at this point in time.

22 MR. JAGOE: The plat is just not valid.

23 MR. ELLIOTT: Right.

24 MR. JAGOE: No matter how we act.

25 CHAIRMAN: Let me bring Ms. Yarbray back

1 up, please.

2 Ms. Yarbray, you understand the situation  
3 the commission is in?

4 MS. ENGLEBERT: Yes, sir, and I can  
5 appreciate it.

6 CHAIRMAN: So really we can't really vote  
7 on the application until we have a valid application.

8 MS. ENGLEBERT: And we understand that.

9 CHAIRMAN: Mr. Elliott has made it very  
10 clear to us what our steps are now and after hearing  
11 there's no dispute on the situation.

12 MS. ENGLEBERT: There is no dispute on the  
13 ownership. There's just a dispute on the fact that  
14 Mr. Simmons had given his approval for the Humane  
15 Society.

16 CHAIRMAN: That is not anything to be  
17 decided here.

18 MS. ENGLEBERT: No, sir, obviously.

19 CHAIRMAN: Based on what Mr. Elliott has  
20 recommended, we're going to base our recommendation,  
21 our motion on his recommendation, from our legal  
22 counsel.

23 MS. ENGLEBERT: I understand.

24 CHAIRMAN: I wanted you all to be aware of  
25 what situation we are in.

1 MS. ENGLEBERT: And we were aware that  
2 that might have been a possibility, but it still  
3 doesn't affect, I assume, the Humane Society's ability  
4 to then submit the plan again at any future time in  
5 the event that Mrs. Simmons is successful in her  
6 request to be able - -

7 CHAIRMAN: Correct. Thank you, Ms.  
8 Yarbray.

9 Are there any further questions by the  
10 commission?

11 (NO RESPONSE)

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

14 MR. CAMBRON: My motion is to vacate this  
15 amendment at this point in time, Mr. Chairman.

16 CHAIRMAN: Mr. Elliott, would that be  
17 correct?

18 MR. ELLIOTT: Yes.

19 CHAIRMAN: We've got a motion from Mr.  
20 Cambron to vacate it.

21 MS. DIXON: Second.

22 CHAIRMAN: We've got a second by Ms.  
23 Dixon. All in favor raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 -----

3 MAJOR SUBDIVISION

4 ITEM 13

5 Heartland, (Phase III), 43.44 acres  
6 Consider approval of major subdivision preliminary  
7 plat.

8 Applicant: Jagoe Development, LLC

9 MR. JAGOE: Mr. Chairman, I would like to  
10 disqualify myself.

11 CHAIRMAN: Mr. Jagoe will be disqualified.

12 Let the record note.

13 MR. NOFFSINGER: Mr. Chairman, this  
14 application has been reviewed by the Planning Staff  
15 and Engineering Staff. It's found to meet the  
16 requirements of the subdivision regulations. For that  
17 it's recommended for approval.

18 CHAIRMAN: Is anybody representing the  
19 applicant?

20 (NO RESPONSE)

21 CHAIRMAN: Any questions?

22 (NO RESPONSE)

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

25 MR. HAYDEN: Motion for approval.

CHAIRMAN: Motion for approval by Mr.

1 Hayden.

2 SISTER VIVIAN: Second.

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

5 (ALL BOARD MEMBERS PRESENT - WITH THE  
6 DISQUALIFICATION OF MR. JAGOE - RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item, please.

9 -----

10 MINOR SUBDIVISION

11 ITEM 14

12 2790 Reid Road, 2933 Hillside Drive, 6.102, 6.093  
13 acres

14 Consider approval of major subdivision final plat.  
15 Applicant: John D. Reid, L.D. Baker

16 MR. NOFFSINGER: Mr. Chairman, this plan  
17 has been reviewed by the Planning Staff and  
18 Engineering Staff. It's been ordered by circuit court  
19 that the Planning Commission approve said plat.

20 CHAIRMAN: Is anybody here representing  
21 the applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Any questions?

24 (NO RESPONSE)

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

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

3 CHAIRMAN: Motion for approval by Mr.  
4 Cambron.

5 MS. DIXON: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, please.

11 -----

12 SURETY RELEASE

13 ITEM 15

14 Daviess County Farm Bureau, \$2,130.00  
15 Consider release of surety (Certified Check) for  
16 landscaping.  
17 Surety posted by: Q&S Contracting, Jim Leach

18 ITEM 16

19 Graystone Estates, Section 2, Unit #1, \$7,500.00  
20 Consider partial release of surety (Performance Bond)  
21 for fire hydrants  
22 Surety retained (Performance Bond) \$5,000.00  
23 Surety posted by: Jagoe Land Corporation

24 ITEM 17

25 Graystone Estates, Section 2, Unit #1, \$500.00  
Consider release of surety (Certified Check) for water  
mains.  
Surety posted by: Jagoe Land Corporation

ITEM 18

Hialeah Park of Lakeside at the Downs, Unit #1,

1       \$45,305.00  
2       Consider partial release of surety (Irrevocable Letter  
3       of Credit) for streets, sidewalks and storm sewers.  
4       Surety retained (Irrevocable Letter of Credit)  
5       \$47,389.40  
6       Surety posted by: Thompson Homes, Inc.

7  
8                   MR. NOFFSINGER: Mr. Chairman, Surety  
9       Releases Items 15 through 18 are in order and may be  
10      released in toto.

11                   MR. JAGOE: Mr. Chairman, I need to  
12      disqualify myself on Items 16 and 17.

13                   CHAIRMAN: Mr. Jagoe is disqualifying  
14      himself on Items 16 and 17 let the record note.

15                   The chair is ready for a motion.

16                   DR. BOTHWELL: Motion for approval.

17                   CHAIRMAN: Motion for approval by Dr.  
18      Bothwell.

19                   MR. APPLEBY: Second.

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

22                   (ALL BOARD MEMBERS PRESENT - WITH THE  
23      DISQUALIFICATION OF MR. JAGOE ON ITEMS 16 AND 17 -  
24      RESPONDED AYE.)

25                   CHAIRMAN: Motion carries unanimously.

Next item.

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SURETY TRANSFERS

ITEM 19

Hialeah Park of Lakeside at the Downs, unit #1,  
\$1,904.00  
Transfer of surety (Irrevocable Letter of Credit) for  
water mains to the City of Owensboro.  
Surety posted by: Thompson Homes, Inc.

ITEM 20

Shadewood Terrace North, \$2,500.00  
Transfer of surety (Certified Check) for  
lateral/street cut to the City of Owensboro  
Surety posted by: Development Associated of Kentucky,  
Inc.

MR. NOFFSINGER: Mr. Chairman, Surety

Transfers 19 and 20 are both in order and may be  
transferred.

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.

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 for adjournment by Ms.



1 Dixon.

2 MR. HAYDEN: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 the foregoing Owensboro Metropolitan Planning & Zoning  
6 meeting was held at the time and place as stated in  
7 the caption to the foregoing proceedings; that each  
8 person commenting on issues under discussion were duly  
9 sworn before testifying; that the Board members  
10 present were as stated in the caption; that said  
11 proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 41 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 29th day of March, 2004.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 12  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
DECEMBER 19, 2006

23

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

25