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
MR. JAGOE: Move to approve.

CHAIRMAN: Motion for approval by Mr. Jagoe.

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.

Mr. Noffsinger.

PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 2

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

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

We do recommend that should this parking
lot be constructed it be landscaped as per the zoning
ordinance and any lighting be directed away from the
adjoining residential properties.

CHAIRMAN: Is there anybody here
representing the applicant?

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

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

CHAIRMAN: Wait.

MR. ELLIOTT: State your name, please.

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

(MS. CINDY STURGEON SWORN BY ATTORNEY.)

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

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

MS. STURGEON: Absolutely.

CHAIRMAN: Are they recruiting any more
left-hand fireball pitchers?

MS. STURGEON: They have the best.

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

(NO RESPONSE)

CHAIRMAN: Does 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. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

1817 Leitchfield Road
Land Acquisition and Disposition
Consider comments regarding the acquisition of land by 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.
Referred by: City of Owensboro, Owensboro Independent School System

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. We find no conflict with the adopted comprehensive plan. This project is being done to soften a curve on Leitchfield Road there at the intersection of 18th Street. With that it's ready for your consideration.

CHAIRMAN: Is there anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have any questions?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 4

Horse Fork Trail of Greenbelt Park Bridge Construction

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

Referred by: City of Owensboro

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

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Are there any questions?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. ROGERS: Second.
CHAIRMAN: Second by Mr. Rogers. 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

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

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

Conditions:

1. Consolidation of the two lots of record into one lot meeting the minimum requirements of the R-4DT zone; and,

2. Access shall be limited to a single access
point to West Fifth Street.

Findings of Fact:

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

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

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

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

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

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

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

(NO RESPONSE)

CHAIRMAN: Anybody on the commission?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a
Motion.

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

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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ZONING CHANGES - COUNTY

ITEM 6

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

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:

Condition:

Ohio Valley Reporting
(270) 683-7383
1. Installation of landscape easements and screening in accordance with the Owensboro Metropolitan Zoning Ordinance requirements; and

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

Findings of Fact:

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

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

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

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

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience
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have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody on the commission?

(NO RESPONSE)

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

DR. BOTHWELL: Motion for approval.

CHAIRMAN: Motion for approval by Dr. Bothwell.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 7

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

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

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

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 an Urban
Residential Plan Area, where urban low-density
residential uses are appropriate in limited locations;

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

3. Sanitary sewers are immediately available to
the site.

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

CHAIRMAN: Is there anybody here
representing the applicant?

APPLICANT REP: Yes.

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

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission
have a question?

MR. CAMBRON: Is chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

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

Ohio Valley Reporting
(270) 683-7383
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 - WITH THE DISQUALIFICATION OF MR. JAGOE - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISION

ITEM 8

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

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


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

Ohio Valley Reporting
(270) 683-7383
So with that you will need to consider whether or not you wish to postpone. There may be some folks out in the audience tonight that wish to speak, but the applicant is not present tonight.

CHAIRMAN: Does anybody in the audience have any questions or any statement they'd like to make at this time?

(NO RESPONSE)

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

MR. APPLEBY: Motion to postpone.

CHAIRMAN: Motion for postponement by Mr. Appleby.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion passes unanimously. The item is postponed.

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DEVELOPMENT PLANS

ITEM 9

10510 Franklin Street, 10534 Main Cross Street, Whitesville, 8.535 acres
Consider approval of final development plan.
Applicant: Saint Mary of the Woods Parish, Inc.
MR. NOFFSINGER: Mr. Chairman, this plan has been reviewed by the Planning Staff and the City of Whitesville's contract engineer. It's found to be in order and ready for consideration.

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have a question of the applicant?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for approval by Mr. Rogers.

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.

ITEM 10

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

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

CHAIRMAN: Is anybody here representing
the applicant?

APPLICANT REP: Yes.

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

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission?

(NO RESPONSE)

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

MR. CAMBRON: Move 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.

ITEM 11

811 East Parrish Avenue, 1325 Triplett Street, 1215,
1219, 1309 Pearl Street, 32.344 acres
Consider approval of final development plan.
Applicant: Owensboro Medical Health System

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

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

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

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

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission?

(NO RESPONSE)

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

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

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: Motion carries unanimously.

Thank you.

ITEM 12

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

MR. NOFFSINGER: Mr. Chairman, this development plan was approved by the Planning Commission on January 8th of 2004. There is a
question that has been raised as to the ownership of
the property. This was referred to our attorney Mr.
Stewart Elliott. Stewart Elliott recommended that the
item be placed on the Planning Commission agenda. So
with that I will turn it over to Mr. Elliott.

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

Of course, we as commissioners are not the
ones that determine the ownership of property, but
I've asked all parties to be here to state their
position on this particular item. It appears that
this is jointly owned property and the parties that
own this property there's some dispute as to this
final development plan. So I've asked all of them to
be here and to state their position.

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

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

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

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

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

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

MR. ELLIOTT: Yes. Jointly owned
property, yes.

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

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

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

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

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

MR. ELLIOTT: I don't think so.

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

MR. ELLIOTT: Yes. Well, I'm recommending that. You can go ahead, if you wanted to, and you can reject and void the development plan. I think the
parties are all here. They probably want to address
the commission.

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

Who are the two representing attorneys?

MS. ENGLEBERT: Candy Englebert
representing Carmel Simmons.

CHAIRMAN: Would you go to the podium,
please?

MR. ELLIOTT: State your name, please.

MS. ENGLEBERT: Candy Yarbray Englebert.

(MS. CANDY ENGLEBERT SWORN BY ATTORNEY.)

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

MS. ENGLEBERT: Yes, sir.

CHAIRMAN: Would you sit down, please.

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

MR. ELLIOTT: State your name, please.
MR. LAMAR: Charles Lamar representing Ron Simmons.

(MR. CHARLES LAMAR SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Lamar, would five minutes to make a statement —

MR. LAMAR: Far less than that.

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

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

MS. ENGLEBERT: It's difficult for me to limit my comments to five minutes, but I will do so. Commission members, I appreciate the opportunity to be given to us to speak today. Believe me, and on behalf of my client Carmel Simmons, we don't want to have to be here today.

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

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

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

We do believe that the matter can be resolved or will be resolved obviously one way or the
other when this matter is finally litigated in Daviess Circuit Court in the divorce action.

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

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

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

MS. ENGLEBERT: We previously had our first hearing on January 22nd of 2004. We had it for
all day. We anticipated finishing that day. We have not. So we are rescheduled for April 22nd. We have a hearing set on this issue for the commissioner on March 30th. If you wish to see the deed of easement, I will be glad to provide a copy of the deed of easement signed by Mr. Simmons.

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

Mr. Lamar.

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

The plan has a lot of objectionable things to it. No need to get in to why he's opposed to it, but I think that anyone here who's a property owner immediately recognizes that they don't want the commission acting upon a plan for their property without their knowledge or consent. There's no question that he did not do that. I have a copy of the plat that I understand was approved, the amended development plan drawing. It clearly says on the certification, which the law requires, that Carmel
Simmons signed the owner's signature on December 18 or dated it December 18. Mrs. Stone witnessed it. I'm sure she had no knowledge of the ownership. I don't know that the commission undertakes on its own to make any independent investigation of ownership. Mrs. Simmons certified that she's the only owner of the property shown here on it and adopts this as her development plan. This is false. You have the deed. He said that there was a question about or a dispute about ownership. There's no dispute about ownership. The property is deeded to the two of them as joint tenants with right of survivorship. That's the way it is. There's no question about that. There's no way that this action could be valid. So we stop right there as far as his knowledge of consent unless there's questions.

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

MR. LAMAR: I guess I would say one other thing as far as postponing. There's no benefit in postponing for 30 days because nothing is going to happen in the other proceeding for much longer than that. The next hearing date, as she said, is well after your April meeting of this commission. That will not resolve anything at that time. It may not
even be concluded at that time. This is property
where Mr. Simmons owns and operates his business,
Simmons Wholesale Florists, Inc. This development
plan does not need to be on this property. It should
not be on it. I think that no one on this commission,
if we were here, if we had known about it and could
have been here at the time that you considered it
before, there's certainly not a person on this
commission that would have considered adopting a
development plan over the objection of the owner of
the property.

CHAIRMAN: Are you completed?

MR. LAMAR: Yes.

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

MS. SIMMONS: Yes.

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

MR. ELLIOTT: State your name, please.

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

(MS. CARMEL SIMMONS SWORN BY ATTORNEY.)

CHAIRMAN: I would like you not to make a
statement in regards to the dispute. I'd like you to
speak, if you would speak on behalf of the Humane
Society involving this issue.

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

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

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

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

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

CHAIRMAN: Thank you.

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

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

CHAIRMAN: Mr. Cambron.

Ohio Valley Reporting
(270) 683-7383
MR. CAMBRON: I'd like to make a motion to postpone --

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

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

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

CHAIRMAN: The commission, as Mr. Elliott very well stated, you know, we do not determine ownership. We just wanted to get -- I thought it would be fair to get a statement from you all and get a statement from the Humane Society and get a statement from the Simmons' attorney, Ms. Yarbray, to
get it all, so we'd at least have an overview of
what's going on. We're not going to try --

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

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

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

DR. BOTHWELL: We know that.

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

MR. ELLIOTT: Mr. Chairman, I think at
this point, since there seems to be no dispute as to
ownership, my recommendation to postpone it I don't
think is appropriate. Probably this matter should be,
the development plan should be voided or set aside and
let them resubmit it once they get their problems
resolved. I was thinking a postponement, the parties
may get together and may be able to resolve it by the
next meeting and be able to, you know, compromise the
situation, but it appears that there is no dispute
about ownership. Both parties own it and both owners
did not sign the final development plan. So I don't
think we have any choice but to vacate it and set it
aside. I think a postponement would probably be, at
this point with a divorce pending, probably wouldn't
be resolved in 30 days.

MR. JAGOE: Mr. Chairman, if I could ask

CHAIRMAN: Absolutely.

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

MR. ELLIOTT: Yes.

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

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

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

MR. ELLIOTT: Not at this point in time.

MR. JAGOE: The plat is just not valid.

MR. ELLIOTT: Right.

MR. JAGOE: No matter how we act.

CHAIRMAN: Let me bring Ms. Yarbray back
up, please.

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

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

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

MS. ENGLEBERT: And we understand that.

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

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

CHAIRMAN: That is not anything to be decided here.

MS. ENGLEBERT: No, sir, obviously.

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

MS. ENGLEBERT: I understand.

CHAIRMAN: I wanted you all to be aware of what situation we are in.
MS. ENGLEBERT: And we were aware that that might have been a possibility, but it still doesn't affect, I assume, the Humane Society's ability to then submit the plan again at any future time in the event that Mrs. Simmons is successful in her request to be able --

CHAIRMAN: Correct. Thank you, Ms. Yarbray.

Are there any further questions by the commission?

(NO RESPONSE)

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

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

CHAIRMAN: Mr. Elliott, would that be correct?

MR. ELLIOTT: Yes.

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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Next item, please.

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MAJOR SUBDIVISION

ITEM 13

Heartland, (Phase III), 43.44 acres
Consider approval of major subdivision preliminary
plat.
Applicant:  Jagoe Development, LLC

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

CHAIRMAN: Mr. Jagoe will be disqualified.

Let the record note.

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

CHAIRMAN: Is anybody representing the
applicant?

(NO RESPONSE)

CHAIRMAN: Any questions?

(NO RESPONSE)

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

MR. HAYDEN: Motion for approval.

CHAIRMAN: Motion for approval by Mr.
Hayden.

SISTER VIVIAN: Second.

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

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

CHAIRMAN: Motion carries unanimously.

Next item, please.

MINOR SUBDIVISION

ITEM 14

2790 Reid Road, 2933 Hillside Drive, 6.102, 6.093 acres
Consider approval of major subdivision final plat.
Applicant: John D. Reid, L.D. Baker

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

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions?

(NO RESPONSE)

CHAIRMAN: If not the 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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SURETY RELEASE

ITEM 15

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

ITEM 16

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

ITEM 17

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,

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Consider partial release of surety (Irrevocable Letter of Credit) for streets, sidewalks and storm sewers. Surety retained (Irrevocable Letter of Credit) $47,389.40 Surety posted by: Thompson Homes, Inc.

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

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

CHAIRMAN: Mr. Jagoe is disqualifying himself on Items 16 and 17 let the record note. The chair is ready for a motion.

DR. BOTHWELL: Motion for approval.

CHAIRMAN: Motion for approval by Dr. Bothwell.

MR. APPLEBY: Second.

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

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

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.
Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)
     
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 41 typewritten pages; and that no signature was requested to the foregoing transcript.

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

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

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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