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OWENSBORO METROPOLITAN PLANNING COMMISSION

APRIL 15, 2004

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The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, April 15, 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
- Jimmy Gilles
- Scott Jagoe
- Sister Vivian Bowles
- Judy Dixon
- Dr. Mark Bothwell
- Stewart Elliott,
- Attorney

\* \* \* \* \*

CHAIRMAN: Call the meeting to order.

Let's stand for a prayer and pledge of allegiance.

(PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first order of business is consider the minutes of the March 11, 2004 meeting. Are there any additions, corrections or questions involving these minutes?

(NO RESPONSE)

CHAIRMAN: If there's 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 PUBLIC FACILITIES PLANS  
13 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

14 ITEM 2

15 722, 800 Bolivar Street, 729, 805 Clay Street  
16 Land Disposition  
17 Consider comments regarding the closing of  
18 approximately 355 feet of a 13-foot wide alley  
19 right-of-way running in an east/west direction between  
20 Clay and Bolivar Street.  
21 Referred by: City of Owensboro

19 MR. NOFFSINGER: Mr. Chairman, this  
20 application has been reviewed by the Planning Staff.  
21 We find no conflict with the Adopted Comprehensive  
22 Plan and recommend you forward a letter to that affect  
23 to the City of Owensboro.

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

1 (NO RESPONSE)

2 CHAIRMAN: Does anybody in the audience  
3 have any questions?

4 (NO RESPONSE)

5 CHAIRMAN: Anybody on the commission have  
6 any questions?

7 (NO RESPONSE)

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

10 DR. BOTHWELL: Motion for approval, Mr.  
11 Chairman.

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

14 SISTER VIVIAN: Second.

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 Next item, please.

20 ITEM 3

21 2909, 2917 KY 54

Land Acquisition

22 Consider comments regarding the acquisition of  
23 approximately 0.023 acres of land from Ohio Valley  
2-Way Radio, Inc.

24 Referred by: Daviess County Board of Education

25 MR. NOFFSINGER: Mr. Chairman, this

Ohio Valley Reporting  
(270) 683-7383

1 application has been reviewed by the Planning Staff.

2 We find no conflict with the Comprehensive Plan.

3 I believe this is a piece of property that  
4 Ohio Valley 2-Way Radio acquired from the Daviess  
5 County Board of Education and Highland Elementary  
6 School. Now they are taking a portion of that back.  
7 It's being consolidated in with the balance of the  
8 school property. So with that no conflict.

9 CHAIRMAN: Any questions of the audience?

10 (NO RESPONSE)

11 CHAIRMAN: Any questions by anybody on the  
12 commission?

13 (NO RESPONSE)

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

16 MS. DIXON: Move to approve.

17 MR. CAMBRON: Second.

18 CHAIRMAN: Motion for approval by Ms.

19 Dixon. Second by Mr. Cambron. All in favor raise  
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 ITEM 4

25 1012, 1020 East Fifth Street, 518, 522, 526

1 Breckenridge Street  
Land Disposition  
2 Consider comments regarding the closing of  
approximately 161 feet of an alley right-of-way  
3 running in a north/south direction and approximately  
161 feet of an intersecting alley right-of-way running  
4 in an east/west direction.  
Referred by: City of Owensboro  
5

6 MR. NOFFSINGER: Mr. Chairman, this alley  
7 right-of-way closing has been reviewed by the Planning  
8 Staff. It's found not to be in conflict with the  
9 Adopted Comprehensive Plan and we recommend you  
10 forward a letter to that affect to the City of  
11 Owensboro.

12 CHAIRMAN: Any questions from anybody in  
13 the audience?

14 (NO RESPONSE)

15 CHAIRMAN: Anybody on the commission?

16 (NO RESPONSE)

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

19 MR. GILLES: Motion to approve, Mr.  
20 Chairman.

21 CHAIRMAN: Motion for approval by Mr.  
22 Gilles.

23 MR. JAGOE: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 -----

5 ZONING CHANGES - COUNTY

6 ITEM 5

7 6300 Block Springwood Drive, 2000 Block Northwood  
8 Drive, 62.625 acres  
9 Consider zoning change: From A-U Urban Agriculture  
10 and A-R Rural Agriculture to R-1C Single-Family  
11 Residential  
12 Applicant: Woodland Ridge Development, Inc., Bill T.  
13 Timbrook, LLC

11 MR. ELLIOTT: State your name, please.

12 MS. STONE: Becky Stone.

13 (MS. BECKY STONE SWORN BY ATTORNEY.)

14 PLANNING STAFF RECOMMENDATIONS

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

20 Conditions:

21 1. Prior to the occupancy of any building, the  
22 left turn lane shall be completed, and;

23 2. Sanitary sewers shall be extended to the  
24 property prior to occupancy of any buildings.

25 Findings of Fact:

1           1. The subject property is located in the Rural  
2           Community Plan Area of Sorgho, where urban-low density  
3           residential uses are appropriate in limited locations;

4           2. A preliminary subdivision plat has been  
5           submitted with an expansion of sanitary sewers to  
6           serve the subject property that has been approved by  
7           Regional Water Resource Agency; and,

8           3. The preliminary plat submitted with the  
9           zoning request includes designed improvements to KY 56  
10          consisting of a separate left turn lane on westbound  
11          KY 56 with 100 foot storage and 150 foot taper, which  
12          should serve to maintain adequate traffic capacity on  
13          KY 56.

14                   MS. STONE: We would like to enter the  
15          Staff Report as Exhibit A.

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

18                   APPLICANT REP: Yes.

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

21                   (NO RESPONSE)

22                   CHAIRMAN: Does anybody on the commission  
23          have a question of the applicant?

24                   (NO RESPONSE)

25                   CHAIRMAN: If not the Chair is ready for a

1 motion.

2 MR. CAMBRON: Motion for approval, Mr.  
3 Chairman, based upon Conditions 1 and 2 and Findings  
4 of Fact 1 through 3.

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

7 MS. DIXON: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 ITEM 5A - RELATED ITEM:

13 Woodland Ridge, 62.25 acres  
14 Consider approval of major subdivision preliminary  
15 plat.  
16 Applicant: Woodland Ridge Development, Inc., Bill T.  
17 Timbrook, LLC

18 CHAIRMAN: Mr. Chairman, this plat has  
19 been reviewed by the Planning Staff and Engineering  
20 Staff. Found to be in order and ready for  
21 consideration.

22 CHAIRMAN: Is anybody here representing  
23 the applicant?

24 APPLICANT REP: Yes.

25 CHAIRMAN: Does anybody in the audience  
have a question?

(NO RESPONSE)



1 CHAIRMAN: Anybody on the commission have  
2 a question?

3 (NO RESPONSE)

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

6 MS. DIXON: Move to approve.

7 MR. CAMBRON: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 6

15 Portion of 4715 Sutherland Road, 0.064 acres  
16 Consider zoning change: From A-R Rural Agriculture  
17 to B-4 General Business  
18 Applicant: Jim Hawkins

19 PLANNING STAFF RECOMMENDATIONS

20 Staff recommends approval because the request is  
21 in compliance with the adopted Comprehensive Plan.

22 This recommendation is made subject to the conditions  
23 and findings of fact that follow:

24 Conditions:

25 1. Approval of a final development plan by the  
OMPC.

1           2. Surety posted or construction completed for  
2           initial roadway improvements widening Sutherland Road  
3           to a 20-foot pavement width prior to issuance of  
4           building permit.

5           Findings of Fact:

6           1. The subject property is located in an Urban  
7           Residential Plan Area, where general business uses are  
8           appropriate in very-limited locations;

9           2. Property to the immediate north of the  
10          subject property is zoned B-4 General Business;

11          3. Improvements have been proposed to widen the  
12          existing road to maintain an acceptable level of  
13          service on Sutherland Road; and,

14          4. The applicant's proposal is a logical  
15          expansion of the B-4 General Business zoning to the  
16          north, because it will not significantly increase the  
17          extent of general business uses that are located in  
18          the vicinity or overburden the capacity of the  
19          roadways or other necessary urban services in the  
20          affected area, upon completion of the proposed roadway  
21          improvements.

22                       MS. STONE: We would like to enter the  
23                       Staff Report as Exhibit B.

24                       CHAIRMAN: Is anybody here representing  
25                       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 Chair is ready for a  
8 motion.

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

12                  DR. BOTHWELL: Second.

13                  CHAIRMAN: Motion for approval by Ms.  
14 Dixon. Second by Dr. Bothwell. All in favor raise  
15 your right hand.

16                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17                  CHAIRMAN: Motion carries unanimously.

18                  Next item, please.

19                  ITEM 6A - RELATED ITEM:

20                  4715 Sutherland Road, 1.093 acres  
21                  Consider approval of amended final development plan.  
22                  Applicant: Jim Hawkins

23                  MR. NOFFSINGER: Mr. Chairman, this plan  
24                  has been reviewed by the Planning Staff and  
25                  Engineering Staff. It's found to be in order. It  
                  meets the site development requirements of the adopted

1 zoning ordinance. If approved it should be subject to  
2 the applicant being granted a conditional use permit  
3 by the Board of Adjustment for the proposed use of the  
4 property. With that it's in order.

5 CHAIRMAN: Any questions from the  
6 audience?

7 (NO RESPONSE)

8 CHAIRMAN: Any questions from the  
9 commission?

10 (NO RESPONSE)

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

13 SISTER VIVIAN: I move for approval.

14 CHAIRMAN: Motion for approval by Sister  
15 Vivian.

16 MR. APPLEBY: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 -----

23 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

24 ITEM 7

25 3123, 3151, KY 54, 3441, 3509 Fairview Drive, 24.61

1 acres (POSTPONED from March meeting)  
2 Consider approval of major subdivision preliminary  
3 plat/final development plan.  
4 Applicant: Site, Inc., Denney Development, Constance  
5 Epperson, John G. Conway, Jr., Forreset D. Hagan,  
6 William F. & Clara M. Lyninger, ABBS Partnership,  
7 Industrial Leasing Corporation of Florida

8 MR. NOFFSINGER: Mr. Chairman, this  
9 development plan has been reviewed by the Planning  
10 Staff and Engineering Staff. It's found to be in  
11 order with the exception that the zoning was not  
12 officially approved by the Daviess County Fiscal Court  
13 this afternoon at their regular session. They did  
14 decide to postpone taking action on the zoning change  
15 until a future meeting date. Aside from that, and you  
16 may want to seek legal counsel in terms of what your  
17 options are in to moving forward, but the development  
18 plan as submitted is in order.

19 CHAIRMAN: Thank you, Mr. Noffsinger.

20 Mr. Elliott, would you mind to comment and  
21 give us our options before we begin.

22 MR. ELLIOTT: In that the zoning has not  
23 been approved yet, I would think this board would not  
24 want to take any action on this until the zoning has  
25 actually been approved by fiscal court. I understand  
it's delayed for two weeks. I would think our correct  
action should be to postpone this action until they  
have acted on it.

1                   CHAIRMAN: Mr. Elliott, do we not have the  
2 option to approve or disapprove - -

3                   MR. ELLIOTT: We would have the option to  
4 approve it subject to the zoning to be approved.

5                   CHAIRMAN: Because that way if this board  
6 decides to take action, then the applicant would not  
7 have to wait an additional two weeks for our meeting  
8 to act upon something we have not done.

9                   MR. ELLIOTT: The only thing is we do not  
10 know what the fiscal court is going to do, whether  
11 they're going to approve it, addition additional  
12 conditions to it, or are they going to do anything  
13 that may change the development we are considering  
14 now. It'd probably be best that we not take any  
15 action on it until they take their action to approve  
16 or disapprove.

17                   MR. CAMBRON: Two weeks would put it into  
18 the first of May anyway and our next meeting is what?

19                   MR. ELLIOTT: Our next meeting is what?

20                   MR. CAMBRON: Six days after that or  
21 something. I don't think it's going to be that big of  
22 a problem.

23                   CHAIRMAN: Mr. Noffsinger, what would be  
24 the option there if we do - - if we do postpone it,  
25 obviously it'd just come back before us. The

1 applicant wouldn't be penalized in a way from  
2 postponing it.

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Would we have the option, if we  
5 did go ahead and pass this or take take action on  
6 this, if we did do it based upon all conditions of the  
7 fiscal court, could we do that or should we still not  
8 - -

9 MR. NOFFSINGER: No, sir. You need to  
10 consider the development plan as submitted.

11 DR. BOTHWELL: Mr. Chairman and Mr.  
12 Noffsinger, how much leeway is there for them to  
13 change the zoning? The zoning is pretty much, as I  
14 understand, black and white. It's either approved or  
15 not. What conditions could they add to the passage of  
16 the zoning?

17 MR. ELLIOTT: They have a right not to  
18 accept the recommendation.

19 DR. BOTHWELL: I understand that, but what  
20 could they do except yes or no to the zoning change?

21 MR. ELLIOTT: I think that's about all  
22 they could do.

23 DR. BOTHWELL: So go ahead with a  
24 development plan. I'm just asking, you made the point  
25 that they may put new conditions on it. I don't

1 understand what conditions they could.

2 MR. ELLIOTT: The condition being they may  
3 deny it. I don't know what they could put on it. I  
4 don't think they could put any other conditions or  
5 changes. It just seemed like the best procedure would  
6 be not to act on it at this time.

7 CHAIRMAN: Mr. Elliott, would you suggest  
8 before we even get into discussion or postponement or  
9 taking action on this matter that maybe the commission  
10 should vote on which direction, whether we're going to  
11 vote to postpone or vote to - -

12 MR. ELLIOTT: I think so. If you were to  
13 postpone it, you would have to have a motion to  
14 postpone. If you want to go ahead and act on it, you  
15 go ahead and act on it.

16 MR. APPLEBY: The question I've got is,  
17 you know, we're strictly looking at a development. As  
18 far as we're concerned, what do we care what the  
19 zoning of the ground is? Either this plan is in  
20 compliance or it's not.

21 CHAIRMAN: Mr. Noffsinger, you do have the  
22 floor.

23 MR. NOFFSINGER: I think this commission  
24 has several options. I think you have the option to  
25 move forward with consideration of this plan. If



1 you're so inclined to approve it subject to the zoning  
2 being approved by the Daviess County Fiscal Court as  
3 submitted to them. I think you have that right. It's  
4 a condition of approval and the zoning ordinance  
5 allows for that.

6           You also have the option of postponing.  
7 If this commission does not feel comfortable in terms  
8 of the outcome at the Daviess County Fiscal Court,  
9 then you have that opportunity. But if the zoning is  
10 not approved, they cannot move forward with this  
11 development plan.

12           I guess the answer to your question is it  
13 doesn't really matter. There's going to be a public  
14 hearing on this development plan and you're going to  
15 take action on this development plan. It can be  
16 approved subject to them obtaining the proper zoning.  
17 Now, if fiscal court sets other conditions on the  
18 zoning change, they will have to hold a public  
19 hearing, advertise for public hearing, go on a fact  
20 finding mission of their own and establish conditions.  
21 Fiscal court has to act by May 12th of this year or  
22 this property becomes rezoned by operation of law, but  
23 you have to fit within the 90 day window of when the  
24 Planning Commission recommended the zoning change for  
25 approval. That happened on February 12th of 2004. I

1 hope we have an action on this zoning change by May  
2 12th of this year. This commission, as I read the  
3 ordinance and understand it, you have every right to  
4 consider the development plan. We just approved a  
5 preliminary subdivision plat for a residential  
6 property that's not yet zoned. That zoning change  
7 will have to go before the Daviess County Fiscal Court  
8 for approval, but we will not issue building permits.  
9 They cannot move forward on that plan until such time  
10 they have the proper zoning. That's the same  
11 situation here. That was the long answer to your  
12 short question.

13 DR. BOTHWELL: Mr. Noffsinger, I guess my  
14 question though still, Mr. Elliott answered it from  
15 his standpoint. I'd like to hear yours. What change  
16 other than approval, not approval, or send it back for  
17 reconsideration, but as far as altering the zoning  
18 it's either up or down, correct?

19 MR. NOFFSINGER: No, sir. I think that  
20 the Daviess County Fiscal Court could advertise for  
21 public hearing, take further testimony and then  
22 determine based upon that record they could set  
23 conditions. I think Mr. Elliott would agree.

24 MS. DIXON: If they added conditions that  
25 would alter that development plan, we would have to

1 look at a new development plan and vote on it.

2 MR. NOFFSINGER: That's right. Then the  
3 applicant would have to submit a new development plan  
4 for consideration.

5 MS. DIXON: Is that correct, Stewart?

6 MR. ELLIOTT: Yes.

7 CHAIRMAN: I think at this point in time  
8 the chair is going to ask for a motion from the  
9 commission.

10 MR. CAMBRON: My motion is to postpone it  
11 until at least May, whatever the date is of our next  
12 meeting.

13 MS. DIXON: The second Thursday in May.

14 MR. CAMBRON: Yes, the second Thursday in  
15 May, whatever date that may be. Hopefully between now  
16 and then the court will decide on which direction they  
17 want to go, but at this point in time that's my  
18 motion, to postpone it for at least 30 days top. I  
19 may be completely wrong, but I don't think Wal-Mart  
20 really feels like moving forward on this until they  
21 get it clarified from fiscal court either. I don't  
22 see how this could be detrimental on either one these  
23 issues.

24 CHAIRMAN: We have a motion for  
25 postponement.

1 MS. DIXON: Second.

2 CHAIRMAN: We have second a by Ms. Dixon.  
3 All in favor of the motion for postponement raise your  
4 right hand.

5 (FOUR (4) COMMISSION MEMBERS PRESENT -  
6 JIMMY GILLES, SISTER VIVIAN, NICK CAMBRON AND JUDY  
7 DIXON - RESPONDED AYE.)

8 CHAIRMAN: All opposed.

9 (FOUR (4) COMMISSION MEMBERS PRESENT -  
10 DAVE APPLEBY, SCOTT JAGOE, DREW KIRKLAND AND DR.  
11 BOTHWELL - RESPONDED NAY.)

12 CHAIRMAN: Motion does not pass. All  
13 right. The motion will be considered.

14 MR. JAGOE: My question, Mr. Chairman, the  
15 applicant postponed this previously, and I don't know  
16 whether or not they want to postpone it again, but we  
17 did not give them the opportunity to postpone it.

18 CHAIRMAN: Now that we have voted that we  
19 weren't going to postpone it ourselves, then the  
20 applicant has the opportunity to postpone it if they  
21 want to postpone it. We were going to remove it from  
22 the docket ourselves.

23 MR. JAGOE: I got you.

24 CHAIRMAN: The motion did not carry so we  
25 will consider the matter.

1 Mr. Noffsinger.

2 MR. NOFFSINGER: We're ready to hear from  
3 the applicant.

4 CHAIRMAN: Somebody here representing the  
5 applicant?

6 Yes, sir.

7 MR. ELLIOTT: State your name, please.

8 MR. BERRY: My name is Brad Berry.

9 (MR. BRAD BERRY SWORN BY ATTORNEY.)

10 MR. BERRY: My name is Brad Berry. I'm  
11 with Site, Incorporated. I am the civil engineer for  
12 the project that prepared the development, the company  
13 that prepared the development plan and preliminary  
14 plat. I'm hoping to answer any questions that you  
15 guys may have.

16 CHAIRMAN: Thank you, Mr. Berry.

17 Is there anybody that has any questions of  
18 Mr. Berry?

19 MR. CAMBRON: I have one question. What  
20 would we need to - - I mean in this case I'm not sure  
21 what questions we will need to ask about a development  
22 plan because basically the development has already  
23 been reviewed, has it not, Mr. Noffsinger?

24 MR. NOFFSINGER: Yes, sir. The Planning  
25 Staff and the Engineering Staff has reviewed the

1 development plan and have determined that the plan  
2 meets with minimum specifications required in the  
3 zoning ordinance.

4 MR. CAMBRON: Would there be any  
5 particular questions that would need to be asked? I  
6 don't know that we've done this in the past.

7 MR. NOFFSINGER: I think if you have  
8 questions. Your questions might relate to the  
9 screening on the property adjoining residential areas.  
10 Your questions might speak to transportation issues.  
11 The questions that you may have or anyone else out  
12 here may have.

13 MR. CAMBRON: Some of these issues, a lot  
14 of them have already been taken care of in February,  
15 correct?

16 MR. NOFFSINGER: Well, it was a  
17 preliminary development plan. Some of those issues  
18 have, that's correct. That plan has been approved,  
19 but this is the detailed construction drawing that  
20 will give us more detail in terms of the size of the  
21 retention basin, the drainage calculations and also  
22 speak to specific roadway improvements and screening  
23 issues.

24 MR. CAMBRON: Which is all okay with you  
25 all, right?

1                   MR. NOFFSINGER:  What we're describing to  
2                   you is that we have reviewed and we found that it  
3                   meets the minimum requirements of the ordinance.  In  
4                   fact, in some cases they have gone above and beyond  
5                   what the minimums are.

6                   For example, the screening of some  
7                   adjoining residential properties.  The applicant has  
8                   satisfied the requirements of the city engineer's  
9                   office.  The county engineer's office has also had a  
10                  copy of this plan to review and they satisfied the  
11                  questions raised and issues of the Planning Staff.

12                  MR. JAGOE:  I have two questions of the  
13                  applicant.

14                  I think it was at zoning and they told  
15                  there were two homeowners I think that spoke, maybe  
16                  three, one landowner next-door, asked about the  
17                  screening that would be taken care of on the north  
18                  side of the property and then also the slope and some  
19                  vegetation on the west side of the property.  I'm just  
20                  curious as to all of that.

21                  CHAIRMAN:  Mr. Berry, would you address  
22                  those questions, please?

23                  MR. BERRY:  Based upon the adjacent zoning  
24                  and current land uses in that those areas, the  
25                  property to the north and to the east carry

1 agricultural and/or residential zonings, in those  
2 areas where the zoning warrants a 10-foot landscaping  
3 buffer is required. Within that buffer there has to  
4 be certain trees planted as well as a visual barrier  
5 such as a hedge or a fence. The requirement is for a  
6 6-foot fence. We have offered to put in an 8-foot tall  
7 fence. As far as the tree type, we are putting in an  
8 Evergreen tree type on one of the rows of trees and  
9 there will also be a large canopy type row of trees as  
10 well. That will be along the entire north boundary as  
11 well as about 75 percent of the eastern boundary of  
12 the property. The western boundary of the property is  
13 where Wal-Mart joins to the existing Commonwealth of  
14 Kentucky Detention facility as well as some existing  
15 business.

16 Along both of the boundaries where  
17 adjoining agricultural and/or residential, there will  
18 be additional row of trees up along the boundary of  
19 the parking and paved areas as also required in the  
20 vehicular use area landscaping requirement.

21 On the far northeast, an entire east  
22 boundary there is a drainage channel that due to  
23 impact that the development will have to the existing  
24 alignment of that channel through the Army Corp of  
25 Engineers and requirement there will be additional



1 vegetation as well as the fact that provides a roughly  
2 50 plus foot wide landscape buffer between payment on  
3 Wal-Mart and any adjoining property on those two  
4 boundaries.

5 MR. JAGOE: Thank you.

6 CHAIRMAN: Yes, ma'am. Please step to the  
7 podium and be sworn in and you can ask your questions.

8 MR. ELLIOTT: State your name, please.

9 MS. HARAGAN: Doris Haragan.

10 (MS. DORIS HARAGAN SWORN BY ATTORNEY.)

11 MS. HARAGAN: I have a petition from 60  
12 names of homeowners in that area that are requesting  
13 Wal-Mart to put a berm, a landscape berm around the  
14 parameter, around the property with fence on top of  
15 that. I have it here. I don't want to submit it. I  
16 could show it to you, but I haven't copied it.

17 CHAIRMAN: Just a moment, please.

18 Mr. Noffsinger, we have a petition from  
19 the homeowners involving a berm around Wal-Mart  
20 property. Is that covered in the ordinance?

21 MR. NOFFSINGER: No, sir. That would go  
22 above the requirements of the ordinance and that would  
23 become an issue that would be discussed between the  
24 homeowners and Wal-Mart and this commission in terms  
25 of whether or not that is a reasonable requirement,

1       how it could fit in.

2                   MR. CAMBRON:  Ms. Haragan, are we talking  
3       about the east and north side or are you speaking of  
4       the east side of the property?

5                   MS. HARAGAN:  Excuse me.

6                   MR. CAMBRON:  I was asking you a question.  
7       Are you talking about just the east side of the  
8       property or east and the north side?

9                   MS. HARAGAN:  East and north.

10                  MR. CAMBRON:  I wanted to make sure I  
11       understood that.

12                  MS. HARAGAN:  We're concerned about people  
13       walking or coming back and forth through there.  We're  
14       concerned about the esthetics, about the way it looks.  
15       We want something beautiful.  We don't want something  
16       that's going to lower our property value.  We don't  
17       want to see it.  We don't want to hear any noise.  We  
18       want a sound barrier.  I've gotten 60 signatures  
19       already.  I haven't finished the neighborhood yet.  
20       I'm the vice president of the Belmont Homeowners  
21       Association.

22                  DR. BOTHWELL:  Ma'am, may I ask a question  
23       of you?  I'm a little confused.  You said the north  
24       and the east.  As I'm looking at this map, the only  
25       residential I see is really going to be just strictly

1 in the northeast corner. Am I correct in what I'm  
2 seeing here in my drawing?

3 MR. NOFFSINGER: Yes, sir, that is .  
4 Along that east property line you would have some  
5 vacant properties or properties right now that are  
6 currently being used for residential activities. We  
7 would anticipate that those properties would be  
8 developed non-residentially, most likely commercial.  
9 So there would be development between the Wal-Mart and  
10 Fairview Drive that would likely be non-residential in  
11 nature.

12 DR. BOTHWELL: But referring to what she  
13 is describing to us, the residential I see is sitting  
14 here in this northeast corner of the development plan.

15 MR. NOFFSINGER: Yes, sir.

16 DR. BOTHWELL: Would you state again what  
17 you are asking?

18 MS. HARAGAN: We think it should go all  
19 the way around because if there's an opening on the  
20 other side, then people can wonder into, they can  
21 wonder back into that farmland. They can wonder into  
22 our subdivision and be a threat to the people there.  
23 Prowlers.

24 DR. BOTHWELL: So you're requesting a, did  
25 you say 6-foot?

1 MS. HARAGAN: Maybe even a 12-foot berm.  
2 High enough so that we can't see or hear.

3 DR. BOTHWELL: You're requesting that to  
4 run all the way from the north edge of the property  
5 all the way down the east side?

6 MS. HARAGAN: Right. From Mount Moriah  
7 because they couldn't cross that. There are people  
8 who live all along there and across the back of the  
9 east side too.

10 CHAIRMAN: I think we'll give Mr. Berry a  
11 shot at that one.

12 Mr. Berry.

13 MR. BERRY: Mainly based upon the  
14 topography of the land as well as the greatest  
15 consideration and the drainage channel that I  
16 previously mentioned that begins on the north side of  
17 the property and runs down the entire east side of the  
18 property that is currently a drainage channel, in  
19 order to build a berm we would basically have to build  
20 that drainage channel and not provide any means for  
21 that drainage to go, which the corp of engineers  
22 certainly would not allow us to do.

23 In addition to that, we have gone to  
24 increasing the height of the fence that is along the  
25 entire north boundary and the eastern boundary down to

1 a point where a future access to the adjacent property  
2 to our east, which is currently zoned for business use  
3 per requirement of the Planning Commission, we are  
4 having a proposed future access point to that  
5 property. So the fence stops at the point of that  
6 future access in order to - - not wall it off from the  
7 Wal-Mart. So there is considerable amount of fencing  
8 as well as vegetative buffer in those areas.

9 CHAIRMAN: Mr. Berry, I know you have not  
10 actually looked at it from that aspect, but how much  
11 of a berm could be put in there without destroying the  
12 drainage?

13 MR. BERRY: Well, particularly on the east  
14 side next to nothing. The drainage channel itself in  
15 order to, you know, basically it's flowing north to  
16 south. In order to - - as it flows that way, it's  
17 obviously deeper toward the southern end as it is on  
18 the front. As those slopes create, as you go down  
19 there the ditch itself and the slopes pretty much are  
20 taking up that entire boundary. On the far northeast  
21 corner, which is about the only part where there is  
22 extra width because it's basically at the head water  
23 for that ditch.

24 We are proposing to not grade in that area  
25 mainly because there is a fairly substantial existing

1 tree stand in that area that we would like to not  
2 touch being that it is mature trees that would provide  
3 a much better buffer than any trees that could be  
4 planted today, as well as there would not be  
5 significant room to get a significant amount of a berm  
6 in that area due to the fact that for every foot of  
7 vertical rise that you want to get, you're going to  
8 take up roughly three feet of horizontal space. So  
9 you would not gain much vertical there anyway. It  
10 already is in that area sloping upward from that  
11 drainage channel. So you would not really gain a  
12 significant amount of the berm in that area.

13 CHAIRMAN: Thank you.

14 Mr. Noffsinger, do you have any comments  
15 regarding the berm drainage situation?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Yes, sir, would you like to  
18 comment?

19 MR. MASSEY: Yes, I would.

20 MR. ELLIOTT: State your name, please.

21 MR. MASSEY: Tom Massey.

22 (MR. TOM MASSEY SWORN BY ATTORNEY.)

23 MR. MASSEY: My property is the one on the  
24 northeast corner. My property is the only one that  
25 touches Wal-Mart in that corner. I've talked to

1 Wal-Mart. We have worked out the agreement with the  
2 8-foot fence, planting the pine trees and the oak  
3 trees. There's already a row of trees there on the  
4 property line that they have agreed not to touch like  
5 he said.

6 My backyard is no - - to that wall is  
7 about as long as my backyard. If you put a berm,  
8 10-foot wall, you're going to walk out my back door  
9 and I'm going to have to look up. You'll be cutting  
10 off a lot of my view if you try to put up a 10-foot,  
11 12-foot wall. I think that would hurt my property  
12 value a lot more than Wal-Mart.

13 MR. CAMBRON: You're talking about a berm?

14 MR. MASSEY: Right.

15 MR. CAMBRON: But not a fence. You're  
16 talking about an 8 or 10-foot berm as opposed to a  
17 10-foot fence.

18 MR. APPLEBY: They're talking about a  
19 fence on top of it.

20 MR. CAMBRON: I'm saying instead of a  
21 berm, you are talking about just the berm in general  
22 and the fence on top of it, right?

23 MR. MASSEY: Right. If you put anything  
24 higher it's going to box me in.

25 MR. JAGOE: Did you say there was existing

1 trees?

2 MR. MASSEY: Yes. There's trees on the  
3 property line right now that they're not even going to  
4 excavate back there.

5 CHAIRMAN: Mr. Massey, were you not at the  
6 zoning hearing and worked this out with Wal-Mart at  
7 that time?

8 MR. MASSEY: Yes.

9 DR. BOTHWELL: As I understand this, was  
10 worked out to your satisfaction?

11 MR. MASSEY: Yes.

12 DR. BOTHWELL: Thank you.

13 MR. ELLIOTT: State your name, please.

14 MR. BROWN: Eric Brown.

15 (MR. ERIC BROWN SWORN BY ATTORNEY.)

16 MR. BROWN: Primary concerns I have with  
17 construction of Wal-Mart are - - understand there's  
18 going to be 10-foot of engineer fill placed in the  
19 north area of the proposed Wal-Mart building area. If  
20 it supposedly slopes from the south side being 54,  
21 then we're going to build it up 10-feet, then I don't  
22 see it draining towards the south side which is  
23 Highway 54 for one.

24 First of all, the 10-foot engineer fill  
25 will raise the finished floor elevation of the



1 proposed Wal-Mart to at or about the approximate  
2 finish of elevation of the existing homes. How big  
3 can you expect a wooden 8-foot or 10-foot fence when  
4 you're bringing up 10-foot of fill to pose as a  
5 barrier?

6 What we're proposing is that an 8-foot  
7 berm be constructed with an 8-foot sound barrier wall  
8 to decrease the level of noise and traffic, customers  
9 and delivery of merchandise at odd hours of the night.  
10 We are proposing that an 8-foot sound barrier wall be  
11 constructed on the north and east side of the proposed  
12 Wal-Mart building due to the fact that the residential  
13 neighborhood would be adversely affect. Not just  
14 Tom's home. It affects my home and probably eight to  
15 ten other homes right through that area.

16 Sound barrier wall not only pose as a  
17 sound deterrent, it will also add a decorative outlook  
18 towards the Wal-Mart building as well which is a major  
19 concern of the Downs Subdivision.

20 Another concern we have is the amount of  
21 buffer zone provided from the proposed buildings, the  
22 residential subdivision that is adjacent. Looking at  
23 the building plans there does not appear to be an  
24 adequate amount of space between the two allowing for  
25 a lot of unnecessary confrontations from homeowner and

1 Wal-Mart.

2 Number 1 being noise and sound. Second  
3 being lights used for the building and parking lots as  
4 well. Another primary concern we have is the amount  
5 of dust and dirt created by the placement of 10-foot  
6 of engineer fill. I guess what we want to know is who  
7 is going to clean our windows, our siding, our cars,  
8 etcetera, you know, during construction of Wal-Mart.  
9 That's pretty much the concerns I have voiced by many  
10 in our subdivision. Thank you.

11 CHAIRMAN: I think Mr. Massey ahead of you  
12 directed what his concerns were and said that his  
13 concerns had been met previously when he attended the  
14 zoning meeting, if I'm not mistaken.

15 MR. BROWN: I think Tom took it upon  
16 himself to make that decision being that he felt he  
17 was the only one affected by the Wal-Mart building.  
18 There's several of us here tonight that disagree with  
19 Tom's decision to go on and get that fence approved  
20 for 8-foot or 10-foot without a berm or anything  
21 thinking he's the only one affected when we all are.

22 CHAIRMAN: My comment was is you referred  
23 to him and the problems that he would face. He had  
24 already previously stated, and he was here at the  
25 zoning meeting and expressed his concern. So Mr.

1 Massey really, his concerns have already been met.  
2 What we're going to do is we're going to ask Mr.  
3 Noffsinger to address the noise, the lighting and the  
4 dust.

5 Mr. Noffsinger.

6 MR. CAMBRON: Before we do that I'd like  
7 to ask Mr. Berry a question here that he brought up,  
8 if you don't mind.

9 Mr. Berry, come back up to the podium,  
10 please.

11 CHAIRMAN: Wait. Let's address this  
12 gentleman's questions first.

13 MR. CAMBRON: This is going to his  
14 questions. This is leading into Mr. Noffsinger so if  
15 I could ask Mr. Berry a question. This will give Mr.  
16 Noffsinger another leading question.

17 CHAIRMAN: Okay. Be seated. We'll bring  
18 Mr. Berry back.

19 MR. CAMBRON: Mr. Berry, as I look at this  
20 drawing, it looks to me like, and I may be mistaken, I  
21 want to clarify that, that the delivery point for all  
22 your merchandise is in the northeast corner; is that  
23 correct?

24 MR. BERRY: Northwest corner.

25 MR. CAMBRON: Northwest. Okay. All the

1 traffic to the service center back there in the back  
2 will be in the northeast corner; is that correct?

3 MR. BERRY: The service center is in the  
4 northeast corner, that's correct.

5 MR. CAMBRON: Is that a drive-thru? They  
6 just drive in and back out. I'm trying to figure this  
7 out. I think they come in and then back out and then  
8 back around; is that correct?

9 MR. BERRY: There are some of both types  
10 of bays. There are three, I believe it's three bays  
11 where it is passed through and three bays that are  
12 drive in and back out.

13 MR. CAMBRON: Anticipation of all of the -  
14 I presume - products you'll sell out of the back.  
15 Won't that be a lot of traffic back through there?

16 MR. BERRY: I guess it's all relative  
17 speaking of what is a lot. You might speak more as  
18 far as what exactly how much traffic a TLE generates.

19 CHAIRMAN: What is a TLE?

20 MR. BERRY: Tire Lube Express. Basically  
21 the type back they mount tires as well as battery  
22 changes and oil changes.

23 MR. CAMBRON: And a lot of noise comes out  
24 of that in the summer, especially when they have the  
25 doors open, correct?

1 MR. BERRY: I would say reasonably.

2 MR. CAMBRON: I would say with the air  
3 ratchets, so on and so forth that is going on back  
4 there, especially if you've got three bays that are  
5 drive-thru, I presume those are for - - are those for  
6 oil changes in particular and the other for tires?

7 MR. BERRY: Yes.

8 MR. CAMBRON: The amount of service that's  
9 done back there basically is tires and oil changes.  
10 Is that all?

11 MR. BERRY: Primarily, yes.

12 MR. CAMBRON: What I'm leading to is just  
13 what I said. A lot of noise will come out of that  
14 corner.

15 MR. BERRY: I believe one of the items  
16 that was discussed in the February meeting that was a  
17 request that has been put into Wal-Mart operation is  
18 to limit the amount of time that those doors are able  
19 to be open to certain periods of time during the mid  
20 day in order to alleviate some of the noise issues.

21 MR. CAMBRON: So you're saying in August  
22 you all are going to close the doors when those guys  
23 are in there working?

24 MR. BERRY: That was one of the request  
25 that was put in.

1 MR. CAMBRON: That will be a tough one.  
2 The other thing is your deliveries. Are  
3 they mostly at night and after hours?

4 MR. BERRY: I do not know the delivery  
5 scheduled. I have no involvement with that.

6 MR. ELLIOTT: State your name, please.

7 MR. RUMOHR: Neal Rumohr.

8 (MR. NEAL RUMOHR SWORN BY ATTORNEY.)

9 MR. RUMOHR: As far as deliveries at  
10 night, they are 24 hours a day. As far as the TLE,  
11 typical operation is from 7 until 9:00 typically.  
12 Eight o'clock I believe is what we are open to in my  
13 store right now.

14 MR. CAMBRON: You brought me to another  
15 question. If during I guess November, October,  
16 November, December months where you have a lot of  
17 layaways, where do you plan on stacking those trailers  
18 at or can you answer that?

19 MR. RUMOHR: Hopefully no trailers. As  
20 far as that goes, the goal is to have it all inside  
21 the building.

22 MR. CAMBRON: Never been to a Wal-Mart  
23 they didn't have trailers sitting around.

24 MR. RUMOHR: We have trailers presently  
25 now, but there are separate Wal-Mart stores that do

1 not.

2 MR. CAMBRON: I have no more questions.

3 CHAIRMAN: Has this led into the previous  
4 question, Mr. Noffsinger? I will restate it for you.

5 His question was in regards to noise, the  
6 lights and the dust.

7 MR. NOFFSINGER: Well, applicant is  
8 proposing to screen along the north and east side with  
9 the 8-foot fence. Be a type of privacy fence. I  
10 guess, a wooden stockade fence. They're not proposing  
11 a fence that would be sound proof or sound barrier  
12 type fence. That's certainly an option that can be  
13 discussed. This commission can discuss with Wal-Mart  
14 to see if they're receptive to that.

15 The amount of screening and trees that  
16 they have along that property line, in time if the  
17 trees are allowed to mature would go a long way to  
18 speak of buffering in terms of sound and your visual  
19 view from that area. I think what we all need to  
20 understand is that there will likely be more  
21 development between this property and Fairview Drive.  
22 If we put a tall berm up, the only thing we're going  
23 to do is isolate Wal-Mart from those adjoining  
24 potential commercial businesses. What we're trying to  
25 do is connect those adjoining vacant properties so

1 that customers can go back and forth. Fairview Drive  
2 is an arterial street. It's a major thoroughfare  
3 designed to move traffic in that corridor. It cuts  
4 right through the Downs Subdivision. If we go too  
5 heavy on screening along that east corridor, then in  
6 time the only thing we're doing is screening Wal-Mart  
7 from those adjoining businesses.

8 Now, it could help in some way to fill in  
9 gaps as those properties develop that might provide  
10 some screening, but its effectiveness down the road I  
11 think would be minimum. We certainly wouldn't want a  
12 continuous wall through there because we want to be  
13 able for customers to shop at Wal-Mart and then go to  
14 the restaurant next door.

15 In terms of light, I believe there's a  
16 notation on the plans, lighting plan, that all lights  
17 would be directed away from residential areas. By  
18 that being on the plan, we can enforce that and make  
19 sure that the light is directed away from residential  
20 areas.

21 In terms of the dust, there's going to be  
22 dust. There will be dust with any construction  
23 project you have out there, unless someone sits out  
24 there daily with a water truck and waters it down.  
25 Then you're going to fight the mud. You know, there



1 will be dust. Now, I can't answer what Wal-Mart is  
2 going to do about the dust. I know in the past when  
3 Lowe's was constructed there was a lot of dust. It  
4 was dry that year. We had a lot of dust. I think we  
5 had some complaints from adjoining business owners  
6 that said, you know, we're having a dust problem. I  
7 think we helped, our office helped negotiate between  
8 Lowe's and those property owners, a way to try to  
9 reduce the amount of dust. That's part of being a  
10 good neighbor. I certainly can't say what Wal-Mart is  
11 going to do. I think they have to address that issue.

12 In terms of noise, I think they're going  
13 to be using some pine trees. If those pine trees are  
14 allowed to mature, pine trees are generally a very  
15 effective sound barrier. Again, they have to be  
16 allowed to mature. If they go in and trim them back  
17 because they're having a bird problem or having any  
18 type of problem with them, they're not going to be  
19 affective.

20 I think I've addressed all the issues I  
21 can, but I can tell you there is a major drainage  
22 ditch along that east property line. Per the Division  
23 of Water, there's certain requirements that have to be  
24 met. That drainage way will have to remain open and  
25 have to carry water and a berm would certainly affect

1 that. A berm, if it were going to be a tall enough  
2 berm to be an affective screening element would have  
3 to go up onto the adjoining properties that are not  
4 part of this development.

5 CHAIRMAN: Thank you, Mr. Noffsinger.

6 MR. CAMBRON: Can I say something to Mr.  
7 Noffsinger real quick, Mr. Chairman?

8 CHAIRMAN: Yes, you can.

9 MR. CAMBRON: I was just looking at the  
10 plantings here that are going to be involved in the  
11 development. I agree what you say, pine trees are  
12 probably the best, but they only have six. Six pine  
13 trees in that northeast corner. Down this east corner  
14 they have ball and Cyprus which in the winter has no  
15 leaves on them. It's just a bare tree. I may have a  
16 recommendation for a few more pine trees down that  
17 east side.

18 MR. NOFFSINGER: That's certainly  
19 something this commission could consider and would be  
20 a legitimate request.

21 MR. BERRY: I would like to address two of  
22 the questions.

23 One, I'll start with the pine trees. We  
24 basically put the pine trees in the vicinity of the  
25 subdivision that was in question in that northeast

1 corner. We have no objection to changing various of  
2 the trees. There's plenty of places for putting in  
3 trees there.

4 As far as on the east side, we can put  
5 pine trees there as well, but it, again, goes to how  
6 much we want to screen any adjacent business off,  
7 future businesses off to the Wal-Mart. We have no  
8 objection to changing any of the trees to pine;  
9 however, we probably would recommend against changing  
10 all of them to pine. That the pine trees do not  
11 provide the type of canopy that the other trees would  
12 and overall growth and visual screening. Just an  
13 overall mix would be better than changing to all pine  
14 trees.

15 In regards to the erosion issue of wind  
16 erosion and dust erosion, it is required of the  
17 contractor that during dry times they maintain all the  
18 road. Whether the erosion is taken away by rainfall  
19 or whether the erosion is wind due to dry conditions.  
20 They are required to water it down. Granted, you  
21 know, no contractor can control 100 percent of the  
22 erosion that is on site, but it is required that they  
23 maintain a good effort to do so in dry periods of time  
24 are required to water daily.

25 CHAIRMAN: Thank you.

1                   Would you like to ask another question?

2                   MS. HARAGAN: One thing. I wish that you  
3 would refer to your records from February 12th. Where  
4 anything that was settled about the buffer zone, if  
5 there was anything settled that night, I was here and  
6 I did not hear anything settled that night. If  
7 anything has been settled, it has been settled since  
8 then by telephone calls. That is just not - - I just  
9 wanted you to check your record.

10                  CHAIRMAN: The only comment I made in  
11 regards was to Mr. Massey, his situation. I  
12 questioned whether his situation had not been dealt  
13 with that night, which it had been.

14                  MS. HARAGAN: It was not. It was not.

15                  CHAIRMAN: Mr. Massey's situation - -

16                  MS. HARAGAN: I was sitting right here and  
17 - -

18                  CHAIRMAN: Would you set back down and  
19 we'll bring Mr. Massey back up.

20                  MS. HARAGAN: Just look at your records.

21                  CHAIRMAN: I'm going to bring Mr. Massey  
22 back up. He was here.

23                  MS. HARAGAN: That's not what happened  
24 that night. It's been settled since then because he's  
25 told me that.

1 DR. BOTHWELL: Mr. Chairman, I believe she  
2 is correct in that they were to get together, Mr.  
3 Massey and Wal-Mart, after that meeting and resolve  
4 that problem.

5 MR. JAGOE: And those items to be on the  
6 development plan.

7 DR. BOTHWELL: Yes, and I assume that they  
8 are. I haven't checked them. It doesn't really say,  
9 but she is correct. That they resolved that outside  
10 of that meeting.

11 CHAIRMAN: Well, if I misspoke saying it  
12 was resolved at the meeting, I should have stated and  
13 do stand corrected that it was corrected after the  
14 meeting then. But they were instructed to get  
15 together and Mr. Massey reported back to us that they  
16 were to his satisfaction.

17 I asked for him to come back and we'll  
18 give him a moment to address that since you did  
19 question the issue.

20 Mr. Massey, would you just address. She  
21 said that possibly I misspoke. During the meeting  
22 possibly you were instructed, as Dr. Bothwell  
23 corrected me; is that correct?

24 MR. MASSEY: Right. The representative of  
25 Site we corresponded through e-mail and telephone

1 calls and worked out an agreement to my satisfaction.

2 CHAIRMAN: Thank you. I misspoke. It was  
3 done at the meeting plans to make were done after the  
4 meeting.

5 MR. MASSEY: We exchanged phone numbers  
6 and e-mail addresses.

7 CHAIRMAN: Right. And you all got  
8 together to your satisfaction. Thank you very much.

9 I'm corrected about my statement about at  
10 the meeting. It was post-meeting.

11 Yes, sir.

12 MR. BERRY: I would like to add one thing  
13 further regarding that. That post the meeting of  
14 February we did meet in the lobby here for a period of  
15 25 to 30 minutes meeting with many of the area  
16 residents and giving out our contact information for  
17 anybody that was here at that meeting that wanted to  
18 meet with us and contact us and Mr. Massey was the  
19 only one to do so.

20 MS. HARAGAN: I'm sorry, but I have to  
21 dispute that. I talked to Kim Henry myself many times  
22 over the telephone.

23 CHAIRMAN: Does anybody else from the  
24 commission or from the audience have any questions?

25 MR. BROWN: As far as the trees they plan

1 on planting in behind the subdivision, the pine trees,  
2 I mean that poses just a bigger problem with debris as  
3 far as pine needles. That's the reason I moved to the  
4 Downs, to get away from my neighbors. They had a pine  
5 tree. I had to rake constantly. I moved there  
6 because I don't have any trees in my backyard and now  
7 we're going to put pine trees in there. Who is going  
8 to rake my yard?

9 MR. APPLEBY: Zoning ordinance requires  
10 the trees.

11 MR. BROWN: I'm sorry.

12 MR. APPLEBY: Our zoning ordinance  
13 requires the trees.

14 MR. BROWN: Yes, but is there an adequate  
15 buffer between the two where the needles won't affect  
16 my yard or my property?

17 MR. CAMBRON: I'm sorry, there's going to  
18 be a 10-foot fence there. I think these trees will  
19 take them a while to mature. I believe that's  
20 something that maybe five, maybe even longer years,  
21 but I'm going to address that a little later when  
22 you're ready.

23 CHAIRMAN: Let me bring our engineer back  
24 one more time.

25 The pine trees I can understand.

1       Fortunately I'm with Mr. Brown. I don't particularly  
2       like pine trees myself; however, in certain areas they  
3       do a wonderful screening job, but I think the latitude  
4       of using, and I know why you're using the other type  
5       trees, because it is more esthetic appeal. In  
6       wintertime in Owensboro, Kentucky, by January 15th  
7       we're not out puttering around too much. It's just a  
8       trade off between you and the neighbors on what - - I  
9       notice Wal-Mart you're going to put in the trees and  
10      as far as what trees you put in I really don't think  
11      it makes that much difference to you all.

12                     Mr. Brown, I think Mr. Cambron was  
13      insisting upon screening for sound barrier. He was  
14      thinking about sound and not so much the esthetics of  
15      the pine trees. I think you and I can relate to what  
16      - - go with pine trees, there's a lot of other things  
17      too.

18                     MR. BROWN: Right. Or something with a  
19      smaller needle.

20                     CHAIRMAN: I think that can be worked out.  
21      I think we might let you and Wal-Mart work that out  
22      because I think you're very receptive to whatever.

23                     MR. BERRY: We are not hooked on any  
24      particular species of tree. When we were asked for an  
25      evergreen tree, we looked for an evergreen tree in



1 this area that would grow to a certain height try to  
2 give as great of a width for the screening. We know  
3 that the types of tree generally grown wider and would  
4 give a better canopy to cover such areas. I can't  
5 recall exactly what kind of pine we chose. That tree  
6 was chosen in order to provide width as well as height  
7 for wintertime screening. We are not hooked to any  
8 particular type of tree. We're just trying to work  
9 out what the neighbors want.

10 CHAIRMAN: Thank you very much.

11 DR. BOTHWELL: Mr. Chairman, my preference  
12 would be a cedar. It doesn't drop needles and it's  
13 evergreen and it's a very beautiful. No needles. I'd  
14 just throw that out.

15 CHAIRMAN: Mr. Gilles, you are our  
16 resident farmer sitting on this. Have you got  
17 anything you'd like to use?

18 MR. GILLES: Cedar would be nice.

19 CHAIRMAN: There's Mr. Gilles' input.

20 Yes, ma'am, do you have a question?

21 MS. SUBLETT: Yes. My name is Mary  
22 Sublett.

23 (MS. MARY SUBLETT SWORN BY ATTORNEY.)

24 MS. SUBLETT: However I am not giving  
25 testimony. I just want to ask a couple of questions

1 and make a statement.

2 I came here as a concern citizen this  
3 evening. I'm a native of Owensboro and recently moved  
4 back here about five weeks ago. Was dismayed to find  
5 that there was a second Wal-Mart coming here. As I  
6 began to talk to people about this, I was further  
7 dismayed to find out that very few of them knew  
8 anything about it. Now, you have answered a lot of  
9 the questions that I have in my mind so I'm grateful  
10 I've had a chance to sit and listen without making a  
11 perfect fool of myself when I ask for citizen  
12 education here.

13 I don't know legal processes obviously. I  
14 don't know how information of this sort is promulgated  
15 throughout the community. I don't know if there is a  
16 representative of private citizens allowed to meet  
17 with you and speak with you. Those are things that I  
18 would like to know because you brought up very  
19 interesting point a moment ago. That this is not the  
20 only big store, the only store that might be moving  
21 into that area. So this whole thing might have to be  
22 done many more times.

23 I personally would like to know what's  
24 going on in my community. I would like to know how to  
25 find that out. I would like to know what is a

1 criteria for the Planning & Zoning Commission that  
2 stores must meet in order to build these places. If  
3 you could help me with that, I would really appreciate  
4 it. As I said, I've already learned a lot this  
5 evening and I'm very grateful for it. Thank you.

6 CHAIRMAN: Thank you, Ms. Sublett. Those  
7 are excellent questions that dovetail right into where  
8 we can pat our staff on the back for the job they do.

9 Number one, any time we have a zoning  
10 change, when property goes from one zone to another,  
11 like rural agricultural to commercial, residential,  
12 etcetera, there is a posting.

13 Mr. Noffsinger, would you take it from  
14 there and give the exact technicalities.

15 MR. NOFFSINGER: What we do on a zoning  
16 change, our staff goes out and post a sign along the  
17 property somewhere. In this case, I'm not sure how  
18 many signs were posted on the property, but several.  
19 I think there were about six actually. Staff back  
20 there is holding up numbers and I can only see some of  
21 it. Six signs on the property. Hopefully they were  
22 visible from Fairview Drive as well as 54 and Mount  
23 Moriah.

24 We also notified adjoining property  
25 owners. Anyone that actually would physically touch

1 the property that's being rezoned of the property, we  
2 would notify them. That includes across public  
3 rights-of-way. We also advertise in the  
4 Messenger-Inquirer in terms of a small notification in  
5 the legal section of the classified. Most of you  
6 probably miss it. You don't read it and don't expect  
7 that you would. That's a requirement by law that we  
8 have to advertise that way.

9 All of our meetings are televised as well.  
10 We have a website, IOMPC.org. On that website you can  
11 gain access to all of our develop requirements, the  
12 comprehensive plan for the community, contact any of  
13 the staff. You can download any forms. Just a wealth  
14 of information on that site. That's a way you can be  
15 educated.

16 In this case, you could also read the  
17 newspaper because before this project ever came before  
18 this commission there was at least one article in the  
19 Messenger-Inquirer explaining what was going to occur.  
20 I know there's been a few letters to the editor as  
21 well as editorial.

22 We also try to educate by getting on  
23 Owensboro Community College Channel 44. We try to do  
24 more outreach to talk about planning and zoning and to  
25 get citizens more involved and better educated.

1       Unfortunately, most of us don't get involved until  
2       we're directly affected, and that's why you're here  
3       tonight. If you weren't being directly affected by  
4       this proposed development, you wouldn't be here  
5       tonight because I can tell you I haven't seen any of  
6       you.

7                       MS. SUBLETT: I'm not, but my friends are.

8                       MR. NOFFSINGER: I understand that and I  
9       respect that. We all live busy lives. Some of you  
10      might have watched meetings on the television. This  
11      is a public body. All meetings are open to the  
12      public. If you have questions, you can contact any of  
13      our staff. I can tell you, Ms. Sublett, Becky Stone  
14      in our office, the planner that spoke here tonight and  
15      read the findings of fact, she'd be more than glad to  
16      sit down with you and go over the comprehensive plan  
17      and describe to you the business requirements that  
18      have to be met. I just met with 15 people this  
19      morning in the Citizens Academy with the City of  
20      Owensboro just started. That's to educate our  
21      citizens on how city government works. Fortunately I  
22      was invited to attend; although, we're not city  
23      employees. We're employees of the Planning  
24      Commission. I was invited to attend. I got to spend  
25      about an hour and a half. It wasn't near enough time

1 talking with those 15 folks and educating them on the  
2 planning process. There are ways to get involved.  
3 Contact us at any time. Let us move on.

4 CHAIRMAN: Thank you, Mr. Noffsinger.  
5 Your education did not overlap your advertisement.

6 Yes, sir.

7 MR. ELLIOTT: State your name, please.

8 MR. HOWARD: Dennis Howard.

9 (MR. DENNIS HOWARD SWORN BY ATTORNEY.)

10 MR. HOWARD: I have one question. In your  
11 deliberations when you consider rezoning this, how  
12 much of traffic played into approving this zoning?

13 CHAIRMAN: That's absolutely part of the  
14 formula that we use.

15 Mr. Noffsinger, why don't you give the  
16 exact outline.

17 MR. NOFFSINGER: What we require, when the  
18 applicants came in and sent a site finder, sent of  
19 site finder to ask questions. They talked about he  
20 proposal, the size of the store. Said, you're going  
21 to need a traffic impact study that's prepared by an  
22 engineer. We want to know what impact this  
23 development is going to have along the roadways within  
24 the community. Their engineers prepared this study.  
25 I reviewed the study as well as the rest of the

1 Planning Staff. Green River Area Development  
2 District, the transportation planners for this  
3 community, they reviewed it. The State of Kentucky  
4 reviewed it as well as the City of Owensboro's  
5 engineer and the county engineer. Had opportunity to  
6 review it as well. Several qualified individuals I  
7 believe reviewed this plan. Wal-Mart was required or  
8 will be required to make improvements to the existing  
9 roadway as well as extend a local street, Mount  
10 Moriah, to connect with Fairview Drive and to connect  
11 with adjoining businesses.

12 They'll widen Highway 54. They also will  
13 make adjustments to signalization. It was a major  
14 factor. On a use like this, transportation is and  
15 always will be a major factor.

16 They took the study out to about Fairview  
17 Drive. It's just about as far as they studied it.  
18 There have been some folks concerned why didn't you go  
19 further. Well, we didn't go further because Highway  
20 54 is a five lane facility until you get to about Lake  
21 Forest and then you start to taper down  
22 Thruston-Dermont Road and you end up in a two-lane  
23 facility. There are plans to widen it and improve  
24 Kentucky 54 on out nearing Whitesville, but those  
25 plans are delayed. Delayed by funding. There's just

1 not any money to do it.

2           The traffic that's coming in from say  
3 Whitesville and the traffic that's coming in from say  
4 Countryside Subdivision most likely is already coming  
5 past this store where this store will be anyway. You  
6 say, why is that? Well, because they're probably  
7 going to go that way to get to Wal-Mart out on  
8 Frederica Street.

9           There are other avenues or opportunities  
10 that someone can take to get to different places once  
11 you go beyond Fairview. So that's why the study  
12 doesn't go beyond Fairview.

13           They look at levels service. Level  
14 service is used in transportation planning to tell you  
15 level of service A on the street is functioning,  
16 carrying capacity is great. It's tremendous. It  
17 can't get any better. You can go down to I believe to  
18 an E, and E is pretty bad. In this study it was found  
19 that in almost all cases pre versus post-development  
20 that the levels of service will not be diminished to  
21 an unacceptable level. Where they are diminished,  
22 they are proposing improvements. Now, there may be  
23 some delays to drop a level of service down from say a  
24 B to a C, but in almost all cases the level of service  
25 is not impacted. It's based upon what their proposing



1 to do. So a tremendous amount of work, time, and  
2 effort went into this. Not in just preparing it, but  
3 reviewing it. I think we had about five different  
4 versions of this study. The study had to change each  
5 time a different connection was being made. We had to  
6 go back and look at that.

7 MR. HOWARD: Basically you're stating,  
8 found that the traffic is already there. It won't  
9 increase. It will be the same amount of traffic on  
10 Highway 54?

11 MR. NOFFSINGER: No, sir. There will be  
12 additional traffic on 54. There will be. They are  
13 proposing that this development will generate about  
14 14,000 daily trips. Trips meaning to and from.  
15 That's 14,000. Seven thousand one way and seven  
16 thousand the other.

17 The discount store they factored in 30  
18 percent of that 14,000 would be pass by. They're  
19 already there. For the Fuel Center 50 percent.  
20 They're already there. I think 40 percent for fast  
21 food restaurant or 50 percent. So they factored that  
22 in. That there's not going to be an additional 14,000  
23 cars out there. There's probably not going to be an  
24 additional 7,000 cars daily. When you do factor all  
25 of that in, they're factoring that additional traffic

1 right there at that signalized intersection primarily,  
2 but you're not going to have that many additional cars  
3 out at Thruston-Dermont Road at Commonwealth Court.  
4 That traffic is going to go in different directions.  
5 Those additional 7,000 vehicles some will come from  
6 the bypass. Some will come from Whitesville. Some  
7 will come from Fairview Drive over from Settles  
8 Road. Just different areas.

9 MR. HOWARD: Does your traffic plan, does  
10 it show bringing more traffic down 54 from say  
11 Fordsville and places that don't have access and  
12 bringing more folks this way instead of the other way?

13 MR. NOFFSINGER: I would have to defer to  
14 their person that prepared that study because they're  
15 look at this store will generate this much traffic and  
16 it's going to come from different directions. Some of  
17 it will come from Fordsville.

18 MR. HOWARD: My concern is as a tax payer.  
19 I live here in Owensboro/Daviess County. When  
20 Wal-Mart Super Center comes in and all of a sudden,  
21 you know, we've got to spend tax dollars expanding the  
22 road. Right now you have a bottle neck right there at  
23 Thruston-Dermont Road. What you're going to do is  
24 overload, in my opinion, overload it more than it  
25 already is in. If you've been by there or if you live

1 out that way and you head into work about 7:00, 8:00  
2 in the morning, you will see what the schools and  
3 whatnot out there, the subdivisions, Premium Allied.  
4 There is a major problem with traffic out there.  
5 You've answered my question as far as the study. I'm  
6 very concerned about that. As tax payers, we don't  
7 want to end up picking up the bill to help expand the  
8 road if Wal-Mart should be doing it. I think that  
9 will be something that they should take a look at.

10 CHAIRMAN: Mr. Noffsinger, can you address  
11 that?

12 MR. NOFFSINGER: Yes. Wal-Mart will be  
13 picking up the bill on improving 54 and making  
14 transportation improvements. Just like Lake Forest  
15 picked up the bill for the decel lane that was  
16 constructed on 54 to get into their development.

17 Development pays a portion of those  
18 development costs as they go. Does development pay  
19 all of the cost? No, probably not. They do pay a  
20 fair share, but we've got more than just a Wal-Mart  
21 that's affecting Thruston-Dermont Road. We have  
22 residential developments. That is hot up and coming.  
23 That's where people are wanting to move and live.  
24 There's additional traffic generated in that area  
25 because of all this development. There are

1 transportation plans to improve those roadways, but  
2 this community is faced with the situation just like  
3 other communities across the state. There's not money  
4 to fund those projects and they're not happening. So  
5 do we continue to grow, grow as we are where  
6 development pays a portion of that cost, or do they  
7 pay all, or do we say no to growth?

8 MR. HOWARD: I see maybe years ago if they  
9 had took a look at where we was expanding out that  
10 way. I never have been able to figure out why they  
11 didn't get the infrastructure there before they  
12 started building all of these projects and all these  
13 subdivisions and schools and fire stations. What do  
14 you do when you have a fire truck backed up in traffic  
15 on 54. You know, you've got everybody raising to  
16 Wal-Mart. That's a concern. You've answered my  
17 question on the other. I've got one other question  
18 and then I'll be done.

19 When you consider a zoning of any business  
20 coming into the community, is there an economic study  
21 done to find out whether it's going to benefit, run  
22 other businesses out of business, or is that part of  
23 your role as Planning & Zoning?

24 MR. NOFFSINGER: No, sir. That is not  
25 factored in. In fact, we cannot rezone based upon who

1 the user will be. It's what they're doing.

2 Now, we do take a look in the  
3 Comprehensive Plan as it's prepared laying out  
4 commercial areas. This is one of them. This is one  
5 area that shows that it's to be commercial. That's  
6 the plan for the future. So this project is in a  
7 commercial area. We look at that and economics, and  
8 the economy employment, that factors into the creation  
9 of that land use plan.

10 Once the property is shown on a land use  
11 plan as being proposed for commercial, then that makes  
12 it easier for someone to submit a zoning change and to  
13 argue their case as to why it should be commercial.

14 Kentucky Revised Statutes, the planning  
15 and enabling legislation dictates to this commission  
16 and other commissions across the state exactly what  
17 they can consider. In doing so, the statutes do not  
18 allow a community to rezone a piece of property  
19 because of who they are. It's strictly tied to land  
20 use, what they do. In this case, Wal-Mart is a  
21 retailer. Retail sales. They are a general business  
22 use. Just like the hardware store down the road in  
23 front of Thoroughbred East. They're also B-4 General  
24 Business and they're allowed to locate there as well.  
25 Wal-Mart generates more traffic than perhaps the

1 hardware store would. So there are different  
2 considerations and different requirements. The  
3 hardware store likely would not submit this traffic  
4 study. Wal-Mart obviously is required to because of  
5 what they generate. So it's not who they are. It's  
6 what they generate. This commission does not, they  
7 don't have the ability to factor in the economics of  
8 it because they're not allowed to by the statutes.

9 MS. HARAGAN: Does it matter to you, to  
10 the board what the people think about, you know, how  
11 they feel it, the citizens? I have a petition here  
12 that have 500 people that do not want Wal-Mart to come  
13 in. This is city wide, county wide, adjoining  
14 counties.

15 DR. BOTHWELL: I think Mr. Noffsinger just  
16 answered that. We cannot discriminate based on who  
17 the business is or what they are period by law.  
18 Whether we care or not it is not issue. We just  
19 cannot discriminate period by law.

20 MS. HARAGAN: Well, are you interested in  
21 what they want?

22 DR. BOTHWELL: Ma'am, it has no bearing on  
23 what we're discussing.

24 MS. HARAGAN: Would you like to have a  
25 copy of the petitions? I have a couple things to give

1 you.

2 CHAIRMAN: We will be glad to receive the  
3 petitions, but I think as Dr. Bothwell stated, I think  
4 Mr. Noffsinger went to great length to explain. The  
5 comprehensive plan states what regulations and  
6 stipulations, whether it's the developer that's  
7 developing a home, subdividing one lot to a family  
8 member, or Wal-Mart who is putting in a super shopping  
9 center must abide by. If they meet those certain  
10 criterias, then this commission has to rule according  
11 to meeting those rules and regulations. We cannot  
12 say, we'll not have a Wal-Mart, but yet we'll let  
13 somebody build homes. That's what the zoning does and  
14 the zoning states certain areas that homes can be  
15 built and certain areas Wal-Mart's can be built, but  
16 not necessarily a Wal-Mart. Any store that meets that  
17 criteria.

18 MS. HARAGAN: I hear you. But you do  
19 listen to what the people say about traffic?

20 CHAIRMAN: That's why we have this open  
21 forum and that's why we've let all the - -

22 MS. HARAGAN; Are you interested or do you  
23 have any kind of rules about environment?

24 CHAIRMAN: Yes, ma'am. They're covered in  
25 the Comprehensive Plan. They were gone over in the

1 zoning meeting that we had.

2 MS. HARAGAN: The drainage and the  
3 pollution from the toxic fumes of bumper to bumper  
4 traffic.

5 CHAIRMAN: That's covered by the state as  
6 far as ozone levels and things that are reported on  
7 the state and county wide. Matter of fact, I think  
8 just in the newspaper and on the radio today.

9 DR. BOTHWELL: Mr. Chairman, that's not  
10 part of what we do.

11 MS. HARAGAN: You're not interested in the  
12 crime rate?

13 CHAIRMAN: Yes, ma'am, I'm very interested  
14 in the crime rate, but as a member of the Planning &  
15 Commission, that's not in my criteria. I think we  
16 have agencies that do cover the crime rate.

17 MS. HARAGAN: Well, I just have to know  
18 what you allow and what you don't allow. I will give  
19 you these. I just would request that you postpone or  
20 delay your vote on this. Will you receive any new  
21 evidence?

22 CHAIRMAN: I believe we've had a pretty  
23 open forum at this time. Any new or different  
24 evidence that's not redundant, we'd be glad to hear  
25 from anybody. I think at the present time I think



1 we've pretty well covered for a development plan. I  
2 think we've pretty well covered most of these things.  
3 Most of these things were covered in the zoning  
4 hearing that we had before.

5 MS. HARAGAN: Is it too late then to  
6 present anything different on the traffic or on the  
7 drainage problems?

8 CHAIRMAN: If you have an engineer that  
9 would like to counter these reports that were made by  
10 an engineering firm and reviewed by the city and  
11 county engineer and reviewed by GRADD, we would be  
12 happy to hear contracting information.

13 MS. HARAGAN: They're not here tonight,  
14 but they could be here, you know, if you delay.

15 CHAIRMAN: I'm sorry, this was well  
16 publicized.

17 DR. BOTHWELL: Mr. Chairman, I think she's  
18 referring to the zoning issue that have already been  
19 passed. That's before fiscal court now. Those  
20 issues, drainage and what you are bringing up, traffic  
21 and so on, those are issues that now fiscal court must  
22 vote on. This body has already passed the zoning.  
23 That would be going back to something we've already  
24 voted on.

25 CHAIRMAN: Thank you.

1 MS. HARAGAN: Let me give you these.

2 CHAIRMAN: If there are no further  
3 comments, I think the chair is ready for a motion.

4 MR. ELLIOTT: State your name, please.

5 MR. SMITH: John L. Smith.

6 (MR. JOHN SMITH SWORN BY ATTORNEY.)

7 MR. SMITH: Again, this is the first time  
8 I've ever been to an OMPC meeting. I'm not here to  
9 address Wal-Mart at all. I'm here for another  
10 purpose.

11 What I would like to say is that I have  
12 zero complaints about Wal-Mart moving out there.  
13 Matter of fact, from my son's bedroom window, we live  
14 in a two story building, we will be able to see the  
15 top of Wal-Mart's roof quite possibly. I can get up  
16 here and say I want a 30-foot wall, but I'm not after  
17 that. I'm not concerned about that.

18 Secondly, there's going to be a tremendous  
19 convenience for the east end section of town. I'm not  
20 going to have drive the bypass to go to the other  
21 Wal-Mart so I like that a lot. I think I'm one of the  
22 thousands that's probably going to like that.

23 Thirdly, as far as the traffic increase, I  
24 lived in Houston, Texas, and if anybody hasn't been to  
25 Houston, Texas, or to Atlanta, or to Washington, D.C.,

1 or New York, or Nashville, or Miami, or Dallas, or  
2 Fort Worth, or San Antonio, which I've been to all for  
3 lengthy amounts of time, they have no idea what  
4 traffic is. I can promise you that. I can't ever  
5 imagine that amount of traffic out on 54.

6 As far as the shopping center, there's  
7 going to be another one built right directly across  
8 from me of 54, on the corner of 54 and Fairview Drive.  
9 I welcome them. They've been taking trees down and  
10 moving dirt. There's been some dust. They've been  
11 lumping the trees together and burning them. That's  
12 part of the construction process. There's no way  
13 around that. That's just it. That's the way it's  
14 going to be. Now, if somebody can sweep dust and show  
15 me how not to stir it up, I'd like to see it.

16 Wal-Mart benefits others as well. They  
17 they benefit other retail. I'm not sure if I'm right  
18 about this, but I believe Commonwealth Court is going  
19 to cross over 54 onto the new shopping center. I'm  
20 not aware of that, but that's what I've been told.  
21 That's great. That's great for me. I live in a  
22 commercial development. I chose to live there. I  
23 will live and die in that commercial development and I  
24 made plans to do that. I couldn't be happier where I  
25 live. The only big issue I have about where I live is

1 harsh lighting. Something I wasn't able to address  
2 before I moved there, which at that time it wasn't  
3 there. Nonetheless, I've learned to live with it.

4 I'm not up here defending Wal-Mart. I'm  
5 not up here to argue against them. They have concerns  
6 and I think Wal-Mart can address the trees. I think  
7 that's a trivial thing. Easily can address that. You  
8 just substitute one tree for another. If they  
9 maintain their landscaping, which I hope they do, I  
10 think it will be very attractive.

11 That shopping center, I'm going to be able  
12 to look out my dining room window, my kitchen window,  
13 and my daughter's bedroom window, and my upstairs loft  
14 and see all of it. It doesn't bother me a bit. With  
15 growth you do have some inconvenience. The city needs  
16 to see growth. I don't mind it a bit. I welcome  
17 Wal-Mart with open arms. It may be a little tougher  
18 for other retail businesses, but they're going to find  
19 their niche. It might even be tougher for us, but  
20 we'll find out niche and we'll make it work. If we  
21 don't, then we'll go a different direction. That's  
22 basically all I have to say.

23 CHAIRMAN: Thank you very much.

24 If there are no further comments from  
25 anybody, the chair is now ready for a motion.

1 DR. BOTHWELL: Mr. Chairman, I make a  
2 motion for approval of the proposed development plan,  
3 Number 7.

4 CHAIRMAN: Let me first ask Mr. Elliott. I  
5 think a motion for approval will have to be a  
6 conditional.

7 MR. ELLIOTT: Condition on rezoning.

8 CHAIRMAN: What would be the exact  
9 terminology that we should use? Subject, conditional?

10 MR. ELLIOTT: Subject to the approval of  
11 the rezoning.

12 CHAIRMAN: Dr. Bothwell, would you restate  
13 your motion?

14 DR. BOTHWELL: I amend it to subject to  
15 the approval of the zoning change by fiscal court and  
16 findings of fact as with all the legal requirements of  
17 the ordinance.

18 MR. APPLEBY: Second.

19 MR. CAMBRON: Can I add an amendment to  
20 that too, Mr. Chairman?

21 CHAIRMAN: You want to amend his motion?

22 MR. CAMBRON: Yes. I just want to add  
23 another condition to it.

24 CHAIRMAN: With Dr. Bothwell's approval.

25 DR. BOTHWELL: May I hear it first before

1 I accept it?

2 MR. CAMBRON: I'd like to change the size  
3 and the type of trees that they're using along the - -  
4 well, all the trees here. They've got a one and three  
5 quarter inch calypter tree throughout. I'd like to  
6 propose for them to pun in four inch calypter trees  
7 and all the way down the east side remove the second  
8 row that is nearest the fence of the Cyprus tree and  
9 put in pine trees the same distance as they would use  
10 along the back there. It comes to approximately - - I  
11 don't have a ruler here to judge that, but I think I'm  
12 pretty close. It would be 15 more trees down the east  
13 side, 15 pine trees down the back here and then  
14 another row of pine trees, approximately five that  
15 spaced in-between the pine trees that are already set  
16 forth in the back northeast corner of that property to  
17 reduce the amount of noise that comes out of that  
18 corner and to the detriment of any of the landowners  
19 to the east or to the north, if that makes sense.

20 DR. BOTHWELL: It makes perfect sense, but  
21 I can't agree with planting four inch trees. I don't  
22 think they have a very high survivability rate.  
23 That's a huge change. You're going from an inch and  
24 three quarter tree to a four inch tree.

25 MR. CAMBRON: You're doubling the size

1 basically.

2 DR. BOTHWELL: Well, a little more.  
3 Height and width and cost. Probably quadrupling it.  
4 I think Wal-Mart should respond to that. No, I will  
5 not accept that as my second until at least we've  
6 heard from Wal-Mart how they feel about that.

7 CHAIRMAN: Wait just a minute. Dr.  
8 Bothwell, you might be the only person in here that  
9 could possibly restate that and get it right.

10 Let me ask Mr. Noffsinger. With Mr.  
11 Cambron's, aren't we changing the development plan  
12 pretty drastically with this - -

13 MR. NOFFSINGER: Sure. You're increasing  
14 the size of the trees. You're more than doubling it.  
15 In terms of - - I'm not going to comment on that in  
16 terms of changing it drastically. Depends on which  
17 side of the fence you're on.

18 MR. CAMBRON: If you're on the east side  
19 or the north side, it's not drastic.

20 MR. NOFFSINGER: I would like to hear from  
21 Wal-Mart to see how they feel about that. Maybe  
22 they're agreeable to that.

23 CHAIRMAN: Did you take good notes on that  
24 or would you like that stated in a little bit shorter  
25 outlined form?

1                   MR. BERRY: I didn't actually see it, but  
2 I believe I pretty much have the gist of it.

3                   As far as the type of tree, we have  
4 absolutely no issue with the type of tree. As far as,  
5 and I believe was - - I want to make sure I  
6 understood. Was spacing of the trees to put them  
7 closer together on that side as well.

8                   MR. CAMBRON: Let me restate. You're  
9 familiar with the six pine trees that you have on the  
10 northeast corner?

11                  MR. BERRY: Yes.

12                  MR. CAMBRON: Come out from those. Plant  
13 five more in front of those. There's a big green  
14 space it looks like there. I'm not sure.

15                  MR. BERRY: May I come on up?

16                  CHAIRMAN: Yes.

17                  MR. CAMBRON: I guess you can, yes.

18                  CHAIRMAN: Mr. Cambron, are these going to  
19 be right at - -

20                  MR. JAGOE: Were you going to change the  
21 species of those, Mr. Cambron?

22                  MR. CAMBRON: I haven't got that far yet.  
23 We'll work on that.

24                  (MR. BERRY APPROACHES BOARD AND CONFERS  
25 WITH MR. CAMBRON.)



1                   MR. BERRY: With not being a landscape  
2 person, I would really hate to answer that myself.

3                   CHAIRMAN: Dr. Bothwell, have you got any  
4 further comment that you would like to make at this  
5 time with the diameter size of the trees?

6                   MR. BERRY: As far as the diameter of the  
7 trees, I believe just from what I have seen in  
8 construction, going from one and three quarter, one  
9 and a half to a four would, that would be a very  
10 substantial tree to bring in in a mass quantity of 30  
11 or 40 trees through that area to bring in and plant.  
12 I don't know the survivability and transplanting of  
13 that size of a tree. I believe maybe a two inch, two  
14 and a half inch, but not being a landscape architect,  
15 I would really hate to go too far into that myself.

16                  MR. CAMBRON: Not to put you out on a  
17 limb, how about two and a half?

18                  CHAIRMAN: Dr. Bothwell, we were in the  
19 midst of your motion and you were courtesy enough to  
20 give Mr. Cambron part of the floor. I think you're  
21 taking it back.

22                  DR. BOTHWELL: I was going to withdraw my  
23 motion presently and let Mr. Cambron make a motion as  
24 to his change and what he wants to do landscape and  
25 let this commission vote on it, aye or nay. Then we

1 can move on to the development plan. I don't want  
2 this attached to my - -

3 MR. JAGOE: Dr. Bothwell had a second to  
4 his motion.

5 CHAIRMAN: We've already had a second?  
6 I'm sorry.

7 MR. JAGOE: Well, there was a second that  
8 came from here.

9 CHAIRMAN: Dr. Bothwell, I did not  
10 recognize the second, fortunately did not hear it. We  
11 had discussion. I think we'll go back to - - Mark, if  
12 you'd like to restate your motion and if we get  
13 another second then we can vote on that. Then, Mr.  
14 Cambron, if that motion does not pass, then Mr.  
15 Cambron can add his tree addendum to this.

16 Mr. Elliott, are we okay?

17 MR. ELLIOTT: Yes.

18 DR. BOTHWELL: Then I stand by my first  
19 proposal.

20 CHAIRMAN: Did we get findings of fact and  
21 subject to?

22 DR. BOTHWELL: Subject to the approval of  
23 the zoning by fiscal court and findings of fact that  
24 it meets the development plan and criteria.

25 CHAIRMAN: Where did we have our second?

1 MR. APPLEBY: Second.

2 CHAIRMAN: Mr. Appleby. All in favor of  
3 Dr. Bothwell's motion raise your right hand.

4 (SEVEN (7) COMMISSION MEMBERS PRESENT -  
5 DAVE APPLEBY, JIMMY GILLES, SCOTT JAGOE, SISTER VIVIAN  
6 BOWLES, DREW KIRKLAND, JUDY DIXON AND DR. BOTHWELL -  
7 RAISED THEIR HAND.)

8 CHAIRMAN: All opposed.

9 (ONE (1) COMMISSION MEMBER PRESENT - NICK  
10 CAMBRON - RESPONDED NAY.)

11 CHAIRMAN: The motion carries seven to  
12 one.

13 Next item, please.

14 MR. CAMBRON: No amendment, right?

15 CHAIRMAN: Dr. Bothwell's motion passed.

16 MR. CAMBRON: So the trees stay as they  
17 are?

18 CHAIRMAN: Correct.

19 MR. CAMBRON: Okay.

20 DR. BOTHWELL: That was my idea. You make  
21 a motion prior to mine. Didn't realize they had a  
22 second. I just didn't want to attach that to my  
23 motion.

24 ITEM 8

25 Meadow Run at Whispering Meadows, 5.989 acres

1 Consider approval of amended major subdivision  
preliminary plat/final development plan.  
2 Applicant: O'Bryan Development, Inc.

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

6 It is an amendment to the plan regarding  
7 the roadway improvement on Kentucky 56. The  
8 improvements were to be constructed to widening 56 was  
9 to be constructed upon the completion or the issuance  
10 of our office 29 building permits. We have already  
11 issued 29 building permits and we're holding surety to  
12 insure that the improvements will be made.

13 The applicant is requesting that the  
14 condition be removed and the OMPC be allowed to issue  
15 additional building permits since we're holding surety  
16 so that he can construct the roadway improvements this  
17 construction season. I believe he has a time frame on  
18 the development plan of when those improvements are to  
19 be constructed. That should be in December. Yes.  
20 The roadway shall be constructed by December 31, 2004.  
21 The Planning Staff has reviewed and would recommend  
22 that this plan be amended to allow the sureties that  
23 he's posted with us to stand good for the roadway  
24 improvements and that additional building permits be  
25 issued up until December 31, 2004. If the roadway

1 improvements are not constructed and completed, then  
2 we would no longer issue building permits until such  
3 time as the improvements are installed.

4 Staff is comfortable with it. The  
5 Engineer Staff is comfortable with it and we recommend  
6 that it be approved.

7 CHAIRMAN: Any comments or questions from  
8 the audience?

9 (NO RESPONSE)

10 CHAIRMAN: Any from the commission?

11 DR. BOTHWELL: Mr. Chairman, I have one  
12 problem with this. We've not long ago ran into a  
13 developer that was not fulfilling his obligations. We  
14 went through that mess. I don't really particularly  
15 want to do that again. Are we that sure that he's  
16 going to fulfill his obligations? I mean are you  
17 absolutely positively sure? You know the circumstance  
18 that I'm referring to.

19 CHAIRMAN: Mr. Noffinger.

20 MR. NOFFSINGER: Yes, sir, I do. I  
21 believe that the applicant, the applicant is Mike  
22 O'Bryan, will make these improvements. It is his  
23 intention. He has posted surety with us. He posted  
24 surety back several months ago with a final unit in  
25 hopes that he would get the roadway improvements

1 constructed. It didn't work out that way. Now, he's  
2 at a point where 29 permits have been issued. He  
3 can't move forward. We're holding surety. We have  
4 that guarantee that the work will be done. If the  
5 work is not done this construction season, then we can  
6 go in and put forth the bond. The developer knows  
7 that.

8 DR. BOTHWELL: Mr. Noffsinger, the case  
9 that I'm referring to also had posted surety and we  
10 ended up I think not going to court, but threatening  
11 to enforce that those things would be - - I'm just  
12 concerned about falling into that trap again.

13 MR. NOFFSINGER: Yes, sir, and you have  
14 every right to be. Let me tell you, there's no one  
15 currently pushing for these improvements to be made.  
16 Generally we do not have conditions placed on  
17 developments like this. Usually the surety is posted.  
18 We don't tie it do building permits. This was done  
19 originally because the developer, you know, instead of  
20 posting surety it was negotiated that there would only  
21 be this many homes constructed and then he would make  
22 the improvements. No one is pushing for it. Most  
23 folks aren't aware of the requirement, except the  
24 Planning Staff is certainly aware of the requirement.  
25 Legally we can't issue any more permits and we can't

1 allow him to move forward until we address this issue.  
2 The applicant is here tonight. I think he will state  
3 under oath for the record that he will make good on  
4 these improvements. If not, he should forfeit.

5 DR. BOTHWELL: Your word is good enough  
6 for me. Just remember that I will remember if he  
7 doesn't.

8 MR. JAGOE: Is chair ready for a motion?

9 CHAIRMAN: The chair is ready for a  
10 motion.

11 MR. JAGOE: Move to approve.

12 MR. CAMBRON: Second.

13 CHAIRMAN: Motion for approval by Mr.  
14 Jagoe. Second by Mr. Cambron. All in favor raise  
15 your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item, please.

19 -----

20 MAJOR SUBDIVISIONS

21 ITEM 9

22 3123, 3151 KY 54, 3441, 3509 Fairview Drive,  
23 24.61 acres  
24 Consider approval of major subdivision final plat.  
25 Surety (Performance Bond) posted: \$723,403.50  
Applicant: Constance Epperson & John G. Conway, Jr.,  
Forrest D. Hagan, William F. & Clara M. Lyninger, ABBS  
Partnership, Industrial Leasing Corp of Florida

1 MR. NOFFSINGER: Mr. Chairman, this plat  
2 has been reviewed by the Planning Staff. The plat is  
3 found to be in order. It's also been reviewed by the  
4 Engineering Staff. Found to be in order and it's  
5 ready for consideration.

6 This property, this plat also involves the  
7 Wal-Mart project. It is for the Wal-Mart project.  
8 Zoning, whether or not the zoning change would pass or  
9 not is not critical to the approval of this plat.  
10 This is a subdivision plat posted of surety. I don't  
11 think you have to approve this subject to, if you want  
12 to approve.

13 CHAIRMAN: Are there any questions?

14 (NO RESPONSE)

15 MR. APPLEBY: Motion for approval.

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

18 DR. BOTHWELL: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item.

24 ITEM 10

25 Meadow run at Whispering Meadows, 5.989 acres



1 Consider approval of amended major subdivision final  
plat.

2 Applicant: O'Bryan Development, Inc.

3 MR. NOFFSINGER: Mr. Chairman, what I said  
4 relating to Item 8 also applies to this item. We are  
5 recommending that it be approved. That was the issue  
6 of the roadway improvements, surety, an issuance of  
7 building permits.

8 CHAIRMAN: Questions from the audience or  
9 the commission?

10 (NO RESPONSE)

11 CHAIRMAN: Chair is ready for a motion.

12 MR. CAMBRON: Motion for approval.

13 CHAIRMAN: Motion for approval by Mr.  
14 Cambron.

15 SISTER VIVIAN: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item.

21 ITEM 11

22 3230, 3233, 3239, 3240, 3245 Mount Moriah Avenue,  
6.361 acres

23 Consider approval of major subdivision final plat.

24 Applicant: Mount Moriah Holdings, c/o Karen King

25 MR. NOFFSINGER: Mr. Chairman, Planning

1 Staff and Engineering Staff has reviewed this  
2 application. We find the application to be in order.  
3 This plat would supersede a previous plat that was  
4 approved by this commission that would have required  
5 Mount Moriah to be cul-de-sac and not intersect with  
6 Fairview Drive, provided Mount Moriah was extended out  
7 to Kentucky 54.

8 The proposed Wal-Mart development has  
9 altered the requirement for this Mount Moriah Avenue  
10 to be cul-de-sac. It will allow for Mount Moriah to  
11 remain connected to Fairview Drive.

12 Planning Commission is holding surety to  
13 guarantee that this roadway will be cul-de-sac in the  
14 future. Planning Staff, based upon the Wal-Mart  
15 proposal, we're recommending that this plat be  
16 approved; however, we have reservations as to it being  
17 approved tonight. Because if Wal-Mart's rezoning does  
18 not pass the Daviess County Fiscal Court, then the  
19 Wal-Mart project doesn't go through, we're no longer,  
20 we no longer have an approved plan to cul-de-sac Mount  
21 Moriah. What I would recommend is that the Planning  
22 Commission authorize the planning director to sign the  
23 plat provided that the zoning change regarding the  
24 adjoining property for Wal-Mart is discussed tonight  
25 is approved by the Daviess County Fiscal Court. I

1 just want to make sure that we don't have to go back  
2 through a plat amendment or to get surety. I don't  
3 want to relinquish what we have and what has been  
4 agreed to should the Wal-Mart plan not be approved by  
5 the Daviess County Fiscal Court. I certainly don't  
6 want to delay the applicant here. That's why I ask  
7 that you authorize the director to sign if that  
8 rezoning goes through successfully.

9 DR. BOTHWELL: You don't feel postponing  
10 would be a good thing?

11 MR. NOFFSINGER: Well, again, it could  
12 delay the developer in proceeding a week to two weeks.  
13 He's already waited some time. I certainly don't want  
14 to do that unnecessarily. I think once the zoning  
15 goes through, I can sign the plat and it's done.

16 CHAIRMAN: Dr. King, would you like to  
17 make a comment?

18 MR. ELLIOTT: State your name, please.

19 DR. KING: Randy King.

20 (DR. RANDY KING SWORN BY ATTORNEY.)

21 DR. KING: I understand that it's been  
22 brought to my attention that fiscal court has to  
23 approve the zoning. Then based on the acceptance of  
24 the Wal-Mart final development plan tonight that you  
25 can make a vote on my final development plan which has

1       been submitted. I'm representing Mount Moriah Holding  
2       tonight.

3                   I don't have any problems with what you  
4       propose, as far as signing off. My only request is we  
5       initially posted surety based on an understanding that  
6       Mount Moriah would be dead end or closed on the east  
7       side when the west side was opened up, if Villa point  
8       was extended north. I think that was our agreement.  
9       All that I'm asking the Planning & Zoning Commission  
10      to do is make recommendation to our city commission  
11      and then to a city engineer to release that surety for  
12      an indefinite bond.

13                   The nature of the surety that we posted  
14      was a little bit different than surety normally where  
15      you have a time limit and the development is going to  
16      be completed in a certain time. These particular  
17      sureties were posted with an open end. Whatever  
18      happens in the future if traffic studies shows that we  
19      need to close that or dead end that. They may remain  
20      for ten years. So I'm just asking that based on what  
21      Gary Noffsinger has proposed tonight that he be  
22      capable of signing off on those. I provided a list to  
23      Becky Stone previously. They have since moved out of  
24      the department and I think to the city engineer.

25                   MR. NOFFSINGER: Dr. King once I sign that

1 plat - -

2 DR. KING: Gary, I'm sorry to interrupt  
3 you. I don't have any problems with the delay in the  
4 future. I understand that you can't really make a  
5 motion tonight based on the fact that Wal-Mart cannot  
6 be approved based on the fact that Fiscal Court hasn't  
7 given the rezoning.

8 MR. NOFFSINGER: Dr. King, what will  
9 occur, the Planning Commission will go ahead and take  
10 a vote and authorize me to sign the plat once the  
11 zoning change goes through, if it does. At that time  
12 the City of Owensboro is holding the sureties. Then  
13 they will be get a copy of that plat. I will let them  
14 know that it's good to release that surety.

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

18 DR. BOTHWELL: Motion for approval based  
19 on the conditions of fiscal court approving the zoning  
20 for Wal-Mart and allowing this development to go  
21 forward and allowing Mr. Noffsinger to sign once those  
22 conditions have been met.

23 MR. CAMBRON: Second.

24 CHAIRMAN: Motion for approval by Dr.  
25 Bothwell. Second by Mr. Cambron. All in favor raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 ITEM 12

6 Whispering Meadows, Unit #2, 8.022 acres  
7 Consider approval of amended major subdivision final  
8 plat.

9 Applicant: O'Bryan Development, Inc.

10 MR. NOFFSINGER: Mr. Chairman, the  
11 statements I made regarding Item 8 and 10 also apply  
12 to 12. Plat is in order and ready for consideration.

13 CHAIRMAN: Any questions from the  
14 audience?

15 (NO RESPONSE)

16 CHAIRMAN: From the commission?

17 (NO RESPONSE)

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

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

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

24 MS. DIXON: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item.

4 -----

5 MINOR SUBDIVISIONS

6 ITEM 13

7 712 Clay Street, 414, 418 East 7th Street,  
0.364+ acres

8 Consider approval of minor subdivision plat.

9 Applicant: John L. Smith, Ethel Daugherty

10 MR. NOFFSINGER: Mr. Chairman, Planning  
11 Staff has reviewed this application. It's found to be  
12 in order; however, it does come to you as an exception  
13 to the subdivision regulations.

14 What happens it involved three lots that  
15 are currently I believe nonconforming in area and  
16 size. Actually two lots. It creates a lot that is  
17 less conforming and one that's more conforming. So  
18 it's a trade of land. It's in compliance with the  
19 general intent of the subdivision regulations and we  
20 recommend it be approved.

21 CHAIRMAN: Any questions from the  
22 audience?

23 (NO RESPONSE)

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

1 MR. APPLEBY: Motion for approval.

2 CHAIRMAN: Motion for approval by Mr.

3 Appleby.

4 MR. JAGOE: Second.

5 CHAIRMAN: Second by Mr. Jagoe. All in

6 favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item, please.

10 ITEM 14

11 6042 Ditto Road, 4.53 acres  
12 Consider approval of minor subdivision plat.  
13 Applicant: William Scott

14 MR. NOFFSINGER: Mr. Chairman, this plat  
15 comes before the Planning Commission as an exception  
16 to the subdivision regulations. It involves two  
17 existing tracts. One tract is about a 3.14 acre tract  
18 which meets the minimum frontage requirements along a  
19 public roadway. It does exceed the depth to width  
20 ratios of three to one.

21 The remaining tract is about a 48 acre  
22 tract of land. The proposal is to reconfigure the  
23 existing 3.14 acre tract. In reconfiguring the lot,  
24 which has a house and a storage building on it, it  
25 would create a situation where the new lot would not  
meet the minimum frontage requirements on the public



1 right-of-way. In fact, the frontage would be about 50  
2 feet proposed which creates what we call and what we  
3 looked at as being flag type lot. It also sets up the  
4 opportunity for more non-conforming lots to be created  
5 on both sides of this new lot. Because this property  
6 does not meet the requirements, minimum requirements  
7 of road frontage at the building setback line, which  
8 is 100 feet, and it creates a lot that is more  
9 non-conforming than what we have now as well as  
10 creates an opportunity for additional non-conforming  
11 lots to be created, Staff recommends the division not  
12 be approved.

13 Ms. Stone in our office has talked with  
14 the property owner. Asked them to look at a different  
15 configuration of the lot. It might be made larger, if  
16 necessary, but still maintain the minimum frontage  
17 requirements. So with that it's ready for your  
18 consideration.

19 DR. BOTHWELL: Mr. Noffsinger, I guess  
20 this proposal that sits before us you're saying the  
21 staff is recommending against it?

22 MR. NOFFSINGER: That's correct. For the  
23 reasons that I just described.

24 DR. BOTHWELL: Exactly.

25 CHAIRMAN: Are there any comments or

1 questions?

2 MS. STONE: I just wanted to clarify I  
3 spoke with the surveying firm. Not the property  
4 owner.

5 DR. BOTHWELL: Is Chair ready for a  
6 motion?

7 CHAIRMAN: Chair is ready for a motion.

8 DR. BOTHWELL: Mr. Chairman, I make a  
9 motion not to approve.

10 CHAIRMAN: Wait a minute. Is the  
11 applicant here, somebody representing the applicant?

12 Would you like to make a statement?

13 MR. CECIL: Yes.

14 MR. ELLIOTT: State your name, please.

15 MR. CECIL: Paul Cecil.

16 (MR. PAUL CECIL SWORN BY ATTORNEY.)

17 MR. CECIL: We understand that the lot  
18 does not comply now. It does not comply in the  
19 future. The owner is trying to accommodate his son  
20 who has no need for the more road frontage. He bought  
21 the land at auction and it was a bad configuration at  
22 that time. He's trying to make it more appealing.  
23 Take in a septic area, some storage buildings. We  
24 presented Becky Stone's suggestion to him. If we went  
25 with that suggestion, he has an adjoining lot and that

1 would not be able to access his back 30 acres or so  
2 because there's a pond on one side I think that's  
3 shown on that drawing. He still uses that land for  
4 farming activity. He's just trying to accommodate a  
5 better configuration for a home lot. He doesn't have  
6 any further developmental plans. He just wanted to  
7 make it a better looking lot for his family, his son.  
8 That's all I have.

9 CHAIRMAN: Mr. Cecil, you've been up here  
10 before. This configuration is rather unusual.

11 MR. CECIL: It is. I agree. I told the  
12 owner too. Again, it goes back to it was poorly  
13 constructed at the time of the auction several years  
14 ago. He's trying to rectify that. There's a lateral  
15 line that goes out beyond the existing lot now. We're  
16 trying to go a little bit more to the east to  
17 accommodate that and a storage building that's behind  
18 the home. It's just not a very good lot to begin  
19 with. We're just trying to bring it back more to a  
20 pleasant looking lot. Not really with any future  
21 development idea in mind. Just to accommodate the  
22 necessity of his lateral and the out buildings.

23 CHAIRMAN: Mr. Appleby, I know that you're  
24 one of the flag lot favor. Do you see any helpful  
25 ideas there?

1                   MR. APPLEBY: Well, I don't see that this  
2 improves the esthetics or makes that a lot more  
3 attractive by putting a 50-foot passway, but it does  
4 seem to me that they could extend that line on back,  
5 existing line on back and pick up that storage  
6 building and I suppose pick up that lateral line. I  
7 wouldn't be favor of approval this as is.

8                   CHAIRMAN: Ms. Sstone.

9                   MS. STONE: The Staff's suggestion was  
10 exactly that, to increase the size of the existing lot  
11 over to where they needed to pick up that storage  
12 building and possibly the lateral line. I don't know  
13 where that's located, but we would not endorse  
14 decreasing the lot frontage when the lot frontage  
15 currently at least meet the minimum regulations.

16                   MR. APPLEBY: I think then that would even  
17 still leave the possibility of another lot with enough  
18 frontage, if they want to cut it up later.

19                   MS. STONE: Right.

20                   CHAIRMAN: Mr. Cecil, amongst us you're  
21 the only surveyor we have. The esthetics, the  
22 suggestions that Ms. Stone has made and Mr. Appleby  
23 making suggestions, would I be incorrect to think that  
24 possibly you had made that - -

25                   MR. CECIL: I told them what the rules

1       were, yes. He wanted me to make sure that you  
2       understood it was a family thing and that those were  
3       his concerns. Not developmental, but just to  
4       accommodate his son trying to have a lot that took in  
5       those buildings and his lateral lines.

6                   MR. JAGOE: Mr. Chairman, did we not go  
7       through earlier on Wal-Mart's development plan who it  
8       doesn't matter?

9                   CHAIRMAN: Correct.

10                  SISTER VIVIAN: And the fact he doesn't  
11       plan at this point for any future development, that  
12       doesn't mean someone else won't buy it and make those.  
13       I think we're locked in here.

14                  MS. STONE: He also still has the option  
15       to have a lot at that location by simply increasing  
16       the lot. We're not eliminating the lot or the  
17       possibility of him picking up that storage building or  
18       lateral line.

19                  CHAIRMAN: Mr. Cecil, do you think you  
20       could possibly work with your client and get this one  
21       a little bit more conforming. We've got quite a few  
22       issues here to deal with. It's not moving one line.  
23       We have quite a bit of issues going on here. I  
24       realize, as you said, it's a family situation. As Mr.  
25       Jagoe pointed out, you know, we had sort of a

1 moratorium on flag lots and situations like that.

2 This one goes all over the place.

3 DR. BOTHWELL: This one looks like the  
4 king of flags.

5 MR. CECIL: I'd be glad to take that back  
6 to owner with those suggestions.

7 CHAIRMAN: As a surveyor I know you did  
8 what you were instructed to do. I know that you've  
9 got ideas that would be a little bit more conforming.

10 DR. BOTHWELL: Mr. Chairman, are we ready  
11 for a motion?

12 CHAIRMAN: I think we're ready for a  
13 motion, Dr. Bothwell.

14 DR. BOTHWELL: Motion not to approve.

15 CHAIRMAN: Motion for not approval by Dr.  
16 Bothwell.

17 MR. APPLEBY: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item.

23 ITEM 15

24 1001, 1011 Lyddane Bridge Road, 2.694, 7.27 acres  
25 Consider approval of minor subdivision plat.  
Applicant: Walter L. Harder, Jr.

1 MR. NOFFSINGER: Mr. Chairman, Planning  
2 Staff has reviewed this application. It does come  
3 before the Planning Commission as an exception to the  
4 subdivision regulations.

5 There's an existing lot located on the  
6 property and the remaining tract of about seven acres  
7 horseshoes around the existing lot. The applicant is  
8 proposing to enlarge the existing smaller lot and to  
9 create a situation where the remaining tract is not in  
10 the shape of a horseshoe and would have frontage only  
11 at one portion on the Lyddane Bridge Road. This is  
12 actually, although it would not meet the depth to  
13 width ratio for the remainder, it certainly improves  
14 the situation over what you have right there or had  
15 there now. So because of that Staff would recommend  
16 this lot division be approved.

17 DR. BOTHWELL: Mr. Noffsinger, we just  
18 finished talking about flag lots. This looks like  
19 we're creating just another one.

20 MR. APPLEBY: We've already got one here.

21 MR. NOFFSINGER: We have two here now.

22 DR. BOTHWELL: But you have two access  
23 points. Now we're going to give up one so you're down  
24 to one access going into this property. If I'm  
25 reading these lines correctly, here's the house where

1 it sits. They're going to run that out to take out  
2 the U-shape. So you're going to be left with just  
3 this piece of property fronting the road where  
4 currently it has two access points.

5 MR. APPLEBY: We don't want that many  
6 access points.

7 DR. BOTHWELL: I'm just saying you're  
8 going from bad to worse. I don't see how you're going  
9 from worse to better.

10 MR. JAGOE: You've gone from three to two.

11 MR. NOFFSINGER: Although it's an usual  
12 shaped lot, it is now and it will be, technically it  
13 doesn't meet the definitions of a flag lot in that it  
14 meets the minimum frontage at the building setback  
15 line as well as it's at least 100 feet wide in all  
16 areas. It's not a situation where they're trying to  
17 create a lot that has 50 feet of frontage on a public  
18 right-of-way and back ups. It actually, you know,  
19 could be viewed as an improvement. It's certainly not  
20 an idea situation, but I think we have there now an  
21 existing lot that's non-conforming and does not meet  
22 the regulations. This would not make that existing  
23 lot any worse in terms of its conforming with  
24 regulations.

25 MR. JAGOE: This one meets some of the



1 regulations, correct?

2 CHAIRMAN: Very well put.

3 MR. JAGOE: Some flags we look at and make

4 - -

5 MR. NOFFSINGER: Very good.

6 MR. JAGOE: It's frontage depth to width,  
7 correct?

8 MR. NOFFSINGER: Yes, sir.

9 MR. JAGOE: So you only get two strikes.

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

11 CHAIRMAN: Chair is ready for a motion.

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

14 CHAIRMAN: Motion for approval by Mr.  
15 Cambron.

16 SISTER VIVIAN: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item.

22 ITEM 16

23 1022, 1040 Southgate Drive, 1.265, 1.951 acres  
24 Consider approval of minor subdivision plat.  
Applicant: Hubert & Glenita Bruington

25 MR. NOFFSINGER: Mr. Chairman, the

1 Planning Staff has reviewed this application.  
2 Obviously it comes before the Commission as an  
3 exception to the regulation.

4 MR. CAMBRON: Mr. Chairman, can I ask one  
5 question here?

6 CHAIRMAN: We haven't even got this one  
7 out yet, Nick.

8 MR. CAMBRON: I've been looking at this.  
9 I'm totally confused.

10 CHAIRMAN: Mr. Noffsinger is getting ready  
11 to take this one and give you exactly what you need to  
12 know.

13 MR. NOFFSINGER: This particular piece of  
14 property is located on a private street in the  
15 Carpenters Lake area. A private street was developed  
16 back many years ago. The property comes before you  
17 because it does not have frontage on a public  
18 right-of-way. It's a plat that I can't sign. There  
19 are other lots that front along Southgate Drive which  
20 is a private street; however, I do not have the  
21 ability to approve them. Now, granted Tract Number 1  
22 is a very odd shaped lot, it does meet all minimum  
23 requirements of a subdivision regulations in that it  
24 meets the depth to width ratio three to one and  
25 frontage. It's just the frontage is not along the

1 public right-of-way, but there are other lots within  
2 this area along this street. So with that Staff  
3 recommends that it be approved.

4 CHAIRMAN: Do you have a motion, Mr.  
5 Cambron?

6 MR. CAMBRON: I sure do. Motion for  
7 approval, Mr. Chairman.

8 CHAIRMAN: Thank you, Mr. Cambron.

9 DR. BOTHWELL: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item.

15 ITEM 17

16 720, 722 Walnut Street, 0.256 acres  
17 Consider approval of minor subdivision plat.  
18 Applicant: Lester & Barbara Haney

19 MR. NOFFSINGER: Mr. Chairman, we have yet  
20 another exception.

21 MR. CAMBRON: This one is unusual.

22 MR. NOFFSINGER: We have two existing  
23 homes that are located on a single lot. Historically  
24 they have been, this situation has been as it is  
25 today. Staff is recommending approval even though the  
lots do not meet the minimum lot frontage requirement

1 of 50 feet. There are other lots within the area that  
2 have less than 50 feet of frontage, and the fact that  
3 there are two homes that are in sound condition. We  
4 recommend it be approved.

5 CHAIRMAN: Are there any questions or  
6 comments?

7 (NO RESPONSE)

8 CHAIRMAN: Chair is ready for a motion.

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

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

13 SISTER VIVIAN: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item, please.

19 -----

20 SURETY RELEASES

21 ITEM 18

22 Bluegrass Truck Trailer & Equipment, \$300.00  
23 Consider release of surety (Cash) for landscaping.  
24 Surety posted by: Bluegrass Truck & Trailer &  
25 Equipment

1 ITEM 19

2 H&I Development, Lot #11, \$531.00  
3 Consider release of surety (Certified Check) for  
4 landscaping.  
5 Surety posted by: H&I Development

6 ITEM 20

7 H&I Development, Lot #22, \$769.50  
8 Consider release of surety (Certified Check) for  
9 landscaping.  
10 Surety posted by: H&I Development

11 ITEM 21

12 Home Depot, \$4,320.00  
13 Consider release of surety (Performance Bond) for  
14 landscaping.  
15 Surety posted by: Home Depot, U.S.A., Inc.

16 MR. NOFFSINGER: Surety Releases are in  
17 order and may be approved in toto, Items 18 through  
18 21.

19 DR. BOTHWELL: Motion for approval.

20 CHAIRMAN: Motion for approval by Dr.  
21 Bothwell.

22 MS. DIXON: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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SURETY TRANSFERS

## 1 ITEM 22

2 Cross Creek, Unit #1, \$5,495.00  
3 Transfer of surety (Certificate of Deposit) for 1"  
4 bitum. concrete surface to the City of Owensboro.  
5 Surety posted by: Pedley Developers, LLC

## 6 ITEM 23

7 Cross Creek, Unit #1, \$5,700.00  
8 Transfer of surety (Certificate of Deposit) for large  
9 headwall over 66" pipe to the city of Owensboro  
10 Surety posted by: Pedley Developers, LLC

## 11 ITEM 24

12 Cross Creek, Unit #1, \$5,700.00  
13 Transfer of surety (Certificate of Deposit) for paved  
14 ditches and headwalls to the city of Owensboro.  
15 Surety posted by: Pedley Developers, LLC

## 16 ITEM 25

17 Cross Creek, Unit #1, \$13,506.00  
18 Transfer of surety (Certificate of Deposit) for  
19 sidewalks to the City of Owensboro.  
20 Surety posted by: Pedley Developers, LLC

## 21 ITEM 26

22 Cross Creek, Unit #1, \$6,140.00  
23 Transfer of surety (Certificate of Deposit) for storm  
24 sewers and drainage to the City of Owensboro.  
25 Surety posted by: Pedley Developers, LLC.

## ITEM 27

Cross Crekk, Unit #1, \$1,750.00  
Transfer of surety (Certificate of Deposit) for valley  
curb and gutter to the City of Owensboro.  
Surety posted by: Pedley Developers, LLC.

## ITEM 28

Mid-America Airpark, Phase II, \$341,316.00  
Transfer of letters to the City of Owensboro for  
public improvements.  
Letters from: City of Owensboro, OMU and RWRA

25

1 ITEM 29

2 Mid-America Airpark, Unit #2, \$255,172.60  
3 Transfer of letters to the City of Owensboro for  
4 public improvements.  
5 Letters from: City of Owensboro, OMU and RWRA

6 ITEM 30

7 Mid-America Airpark, Unit #3, \$111,403.60  
8 Transfer of letters to the City of Owensboro for  
9 public improvements.  
10 Letters from: City of Owensboro, OMU and RWRA

11 ITEM 31

12 Mid-America Airpark, Unit #5, \$16,720.00  
13 Transfer of letters to the City of Owensboro for  
14 streets.  
15 Letters from: City of Owensboro

16 ITEM 32

17 Mid-America Airpark, Unit #7, Phase 1, \$178,442.60  
18 Transfer of letters to the City of Owensboro for  
19 public improvements.  
20 Letters from: The Chamber of Commerce and Industry,  
21 Inc., JDQ, City of Owensboro, OMU and RWRA

22 MR. NOFFSINGER: Surety Transfers Items 22  
23 through 32 are in order and may be transferred in  
24 toto.

25 MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms.  
Dixon.

MR. GILLES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Chair is ready for one last motion.

3 MS. DIXON: Move to adjourn.

4 CHAIRMAN: Motion for adjournment by Ms.  
5 Dixon.

6 DR. BOTHWELL: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 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 105 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 5th day of May, 2004.

18

19

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

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

25