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

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                 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.

Ohio Valley Reporting
(270) 683-7383
MR. CAMBRON: Motion for approval, Mr. Chairman.

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 2

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

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

CHAIRMAN: Is there anybody here representing the applicant?

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CHAIRMAN: Does anybody in the audience have any questions?

CHAIRMAN: Anybody on the commission have any questions?

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

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

CHAIRMAN: Motion for approval by Dr. Bothwell.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

2909, 2917 KY 54
Land Acquisition
Consider comments regarding the acquisition of approximately 0.023 acres of land from Ohio Valley 2-Way Radio, Inc.
Referred by: Daviess County Board of Education

MR. NOFFSINGER: Mr. Chairman, this

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application has been reviewed by the Planning Staff.
We find no conflict with the Comprehensive Plan.

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

CHAIRMAN: Any questions of the audience?
(NO RESPONSE)
CHAIRMAN: Any questions by anybody on the
commission?
(NO RESPONSE)
CHAIRMAN: If not the Chair is ready for a
motion.

MS. DIXON: Move to approve.
MR. CAMBRON: Second.
CHAIRMAN: Motion for approval by Ms. Dixon. Second by Mr. Cambron. All in favor raise
your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.
Next item, please.

ITEM 4

1012, 1020 East Fifth Street, 518, 522, 526
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Breckenridge Street
Land Disposition
Consider comments regarding the closing of
approximately 161 feet of an alley right-of-way
running in a north/south direction and approximately
161 feet of an intersecting alley right-of-way running
in an east/west direction.
Referred by: City of Owensboro

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

CHAIRMAN: Any questions from anybody in
the audience?
(NO RESPONSE)
CHAIRMAN: Anybody on the commission?
(NO RESPONSE)
CHAIRMAN: If not the Chair is ready for a
motion.
MR. GILLES: Motion to approve, Mr.
Chairman.
CHAIRMAN: Motion for approval by Mr.
Gilles.
MR. JAGOE: Second.
CHAIRMAN: Second by Mr. Jagoe. All in
favor raise your right hand.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGES - COUNTY

ITEM 5

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

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

Conditions:

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

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

Findings of Fact:

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

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

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

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

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

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

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: If not the Chair is ready for a
MR. CAMBRON: Motion for approval, Mr. Chairman, based upon Conditions 1 and 2 and Findings of Fact 1 through 3.

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

ITEM 5A - RELATED ITEM:

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

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

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody in the audience have a question?

(NO RESPONSE)

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CHAIRMAN: Anybody on the commission have a question?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

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

PLANNING STAFF RECOMMENDATIONS

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

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

Conditions:

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

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

Findings of Fact:

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

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

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

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

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

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

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

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission?

(NO RESPONSE)

CHAIRMAN: If not Chair is ready for a motion.

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

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6A - RELATED ITEM:

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

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

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

CHAIRMAN: Any questions from the
audience?

(NO RESPONSE)

CHAIRMAN: Any questions from the
commission?

(NO RESPONSE)

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

SISTER VIVIAN: I move for approval.

CHAIRMAN: Motion for approval by Sister
Vivian.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

ITEM 7

3123, 3151, KY 54, 3441, 3509 Fairview Drive, 24.61
Consider approval of major subdivision preliminary plat/final development plan.

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

CHAIRMAN: Thank you, Mr. Noffsinger.

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

MR. ELLIOTT: In that the zoning has not been approved yet, I would think this board would not want to take any action on this until the zoning has 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.
CHAIRMAN: Mr. Elliott, do we not have the option to approve or disapprove --

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

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

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

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

MR. ELLIOTT: Our next meeting is what?

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

CHAIRMAN: Mr. Noffsinger, what would be the option there if we do -- if we do postpone it, obviously it'd just come back before us. The
applicant wouldn't be penalized in a way from postponing it.

MR. NOFFSINGER: No, sir.

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

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

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

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

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

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

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

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

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

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

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

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

    MR. NOFFSINGER: I think this commission
has several options. I think you have the option to
move forward with consideration of this plan. If
you're so inclined to approve it subject to the zoning being approved by the Daviess County Fiscal Court as submitted to them. I think you have that right. It's a condition of approval and the zoning ordinance allows for that.

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

I guess the answer to your question is it doesn't really matter. There's going to be a public hearing on this development plan and you're going to take action on this development plan. It can be approved subject to them obtaining the proper zoning. Now, if fiscal court sets other conditions on the zoning change, they will have to hold a public hearing, advertise for public hearing, go on a fact finding mission of their own and establish conditions. Fiscal court has to act by May 12th of this year or this property becomes rezoned by operation of law, but you have to fit within the 90 day window of when the Planning Commission recommended the zoning change for approval. That happened on February 12th of 2004.
hope we have an action on this zoning change by May 12th of this year. This commission, as I read the ordinance and understand it, you have every right to consider the development plan. We just approved a preliminary subdivision plat for a residential property that's not yet zoned. That zoning change will have to go before the Daviess County Fiscal Court for approval, but we will not issue building permits. They cannot move forward on that plan until such time they have the proper zoning. That's the same situation here. That was the long answer to your short question.

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

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

MS. DIXON: If they added conditions that would alter that development plan, we would have to
look at a new development plan and vote on it.

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

MS. DIXON: Is that correct, Stewart?

MR. ELLIOTT: Yes.

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

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

MS. DIXON: The second Thursday in May.

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

CHAIRMAN: We have a motion for postponement.
MS. DIXON: Second.

CHAIRMAN: We have second a by Ms. Dixon.

All in favor of the motion for postponement raise your right hand.

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

CHAIRMAN: All opposed.

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

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

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

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

MR. JAGOE: I got you.

CHAIRMAN: The motion did not carry so we will consider the matter.
Mr. Noffsinger.

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

CHAIRMAN: Somebody here representing the applicant?

Yes, sir.

MR. ELLIOTT: State your name, please.

MR. BERRY: My name is Brad Berry.

(MR. BRAD BERRY SWORN BY ATTORNEY.)

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

CHAIRMAN: Thank you, Mr. Berry.

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

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

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

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

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

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

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

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

MR. CAMBRON: Which is all okay with you all, right?
MR. NOFFSINGER: What we're describing to you is that we have reviewed and we found that it meets the minimum requirements of the ordinance. In fact, in some cases they have gone above and beyond what the minimums are.

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

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

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

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

MR. BERRY: Based upon the adjacent zoning and current land uses in that those areas, the property to the north and to the east carry
agricultural and/or residential zonings, in those areas where the zoning warrants a 10-foot landscaping buffer is required. Within that buffer there has to be certain trees planted as well as a visual barrier such as a hedge or a fence. The requirement is for a 6-foot fence. We have offered to put in an 8-foot tall fence. As far as the tree type, we are putting in an Evergreen tree type on one of the rows of trees and there will also be a large canopy type row of trees as well. That will be along the entire north boundary as well as about 75 percent of the eastern boundary of the property. The western boundary of the property is where Wal-Mart joins to the existing Commonwealth of Kentucky Detention facility as well as some existing business.

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

On the far northeast, an entire east boundary there is a drainage channel that due to impact that the development will have to the existing alignment of that channel through the Army Corp of Engineers and requirement there will be additional
vegetation as well as the fact that provides a roughly
50 plus foot wide landscape buffer between payment on
Wal-Mart and any adjoining property on those two
boundaries.

MR. JAGOE: Thank you.

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

MR. ELLIOTT: State your name, please.

MS. HARAGAN: Doris Haragan.

(MS. DORIS HARAGAN SWORN BY ATTORNEY.)

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

CHAIRMAN: Just a moment, please.

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

MR. NOFFSINGER: No, sir. That would go
above the requirements of the ordinance and that would
become an issue that would be discussed between the
homeowners and Wal-Mart and this commission in terms
of whether or not that is a reasonable requirement,
MR. CAMBRON: Ms. Haragan, are we talking about the east and north side or are you speaking of the east side of the property?

MS. HARAGAN: Excuse me.

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

MS. HARAGAN: East and north.

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

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

DR. BOTHWELL: Ma'am, may I ask a question of you? I'm a little confused. You said the north and the east. As I'm looking at this map, the only residential I see is really going to be just strictly
in the northeast corner. Am I correct in what I'm
seeing here in my drawing?

MR. NOFFSINGER: Yes, sir, that is.

Along that east property line you would have some
vacant properties or properties right now that are
currently being used for residential activities. We
would anticipate that those properties would be
developed non-residentially, most likely commercial.
So there would be development between the Wal-Mart and
Fairview Drive that would likely be non-residential in
nature.

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

MR. NOFFSINGER: Yes, sir.

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

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

Prowlers.

DR. BOTHWELL: So you're requesting a, did
you say 6-foot?
MS. HARAGAN: Maybe even a 12-foot berm. High enough so that we can't see or hear.

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

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

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

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

In addition to that, we have gone to increasing the height of the fence that is along the entire north boundary and the eastern boundary down to
a point where a future access to the adjacent property
to our east, which is currently zoned for business use
per requirement of the Planning Commission, we are
having a proposed future access point to that
property. So the fence stops at the point of that
future access in order to -- not wall it off from the
Wal-Mart. So there is considerable amount of fencing
as well as vegetative buffer in those areas.

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

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

We are proposing to not grade in that area
mainly because there is a fairly substantial existing
tree stand in that area that we would like to not
touch being that it is mature trees that would provide
a much better buffer than any trees that could be
planted today, as well as there would not be
significant room to get a significant amount of a berm
in that area due to the fact that for every foot of
vertical rise that you want to get, you're going to
take up roughly three feet of horizontal space. So
you would not gain much vertical there anyway. It
already is in that area sloping upward from that
drainage channel. So you would not really gain a
significant amount of the berm in that area.

CHAIRMAN: Thank you.

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

MR. NOFFSINGER: No, sir.

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

MR. MASSEY: Yes, I would.

MR. ELLIOTT: State your name, please.

MR. MASSEY: Tom Massey.

(MR. TOM MASSEY SWORN BY ATTORNEY.)

MR. MASSEY: My property is the one on the
northeast corner. My property is the only one that
touches Wal-Mart in that corner. I've talked to
Wal-Mart. We have worked out the agreement with the
8-foot fence, planting the pine trees and the oak
trees. There's already a row of trees there on the
property line that they have agreed not to touch like
he said.

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

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

MR. MASSEY: Right.

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

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

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

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

MR. JAGOE: Did you say there was existing
MR. MASSEY: Yes. There's trees on the property line right now that they're not even going to excavate back there.

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

MR. MASSEY: Yes.

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

MR. MASSEY: Yes.

DR. BOTHWELL: Thank you.

MR. ELLIOTT: State your name, please.

MR. BROWN: Eric Brown.

(MR. ERIC BROWN SWORN BY ATTORNEY.)

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

First of all, the 10-foot engineer fill will raise the finished floor elevation of the Ohio Valley Reporting
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proposed Wal-Mart to at or about the approximate finish of elevation of the existing homes. How big can you expect a wooden 8-foot or 10-foot fence when you're bringing up 10-foot of fill to pose as a barrier?

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

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

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

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

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

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

CHAIRMAN: My comment was is you referred to him and the problems that he would face. He had already previously stated, and he was here at the zoning meeting and expressed his concern. So Mr.
Massey really, his concerns have already been met. What we're going to do is we're going to ask Mr. Noffsinger to address the noise, the lighting and the dust.

Mr. Noffsinger.

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

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

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

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

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

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

MR. BERRY: Northwest corner.

MR. CAMBRON: Northwest. Okay. All the
traffic to the service center back there in the back will be in the northeast corner; is that correct?

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

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

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

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

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

CHAIRMAN: What is a TLE?

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

MR. CAMBRON: And a lot of noise comes out of that in the summer, especially when they have the doors open, correct?
MR. BERRY: I would say reasonably.

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

MR. BERRY: Yes.

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

MR. BERRY: Primarily, yes.

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

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

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

MR. BERRY: That was one of the request that was put in.
MR. CAMBRON: That will be a tough one.

The other thing is your deliveries. Are they mostly at night and after hours?

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

MR. ELLIOTT: State your name, please.

MR. RUMOHR: Neal Rumohr.

(MR. NEAL RUMOHR SWORN BY ATTORNEY.)

MR. RUMOHR: As far as deliveries at night, they are 24 hours a day. As far as the TLE, typical operation is from 7 until 9:00 typically.

Eight o'clock I believe is what we are open to in my store right now.

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

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

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

MR. RUMOHR: We have trailers presently now, but there are separate Wal-Mart stores that do
MR. CAMBRON: I have no more questions.

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

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

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

The amount of screening and trees that they have along that property line, in time if the trees are allowed to mature would go a long way to speak of buffering in terms of sound and your visual view from that area. I think what we all need to understand is that there will likely be more development between this property and Fairview Drive. If we put a tall berm up, the only thing we're going to do is isolate Wal-Mart from those adjoining potential commercial businesses. What we're trying to do is connect those adjoining vacant properties so
that customers can go back and forth. Fairview Drive is an arterial street. It's a major thoroughfare designed to move traffic in that corridor. It cuts right through the Downs Subdivision. If we go too heavy on screening along that east corridor, then in time the only thing we're doing is screening Wal-Mart from those adjoining businesses.

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

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

In terms of the dust, there's going to be dust. There will be dust with any construction project you have out there, unless someone sits out there daily with a water truck and waters it down. Then you're going to fight the mud. You know, there
will be dust. Now, I can't answer what Wal-Mart is
going to do about the dust. I know in the past when
Lowe's was constructed there was a lot of dust. It
was dry that year. We had a lot of dust. I think we
had some complaints from adjoining business owners
that said, you know, we're having a dust problem. I
think we helped, our office helped negotiate between
Lowe's and those property owners, a way to try to
reduce the amount of dust. That's part of being a
good neighbor. I certainly can't say what Wal-Mart is
going to do. I think they have to address that issue.

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

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

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

CHAIRMAN: Thank you, Mr. Noffsinger.

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

CHAIRMAN: Yes, you can.

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

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

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

One, I'll start with the pine trees. We basically put the pine trees in the vicinity of the subdivision that was in question in that northeast
corner. We have no objection to changing various of the trees. There's plenty of places for putting in trees there.

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

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

CHAIRMAN: Thank you.
Would you like to ask another question?

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

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

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

CHAIRMAN: Mr. Massey's situation --

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

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

MS. HARAGAN: Just look at your records.

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

MS. HARAGAN: That's not what happened that night. It's been settled since then because he's told me that.
DR. BOTHWELL: Mr. Chairman, I believe she is correct in that they were to get together, Mr. Massey and Wal-Mart, after that meeting and resolve that problem.

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

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

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

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

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

MR. MASSEY: Right. The representative of Site we corresponded through e-mail and telephone
calls and worked out an agreement to my satisfaction.

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

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

    CHAIRMAN: Right. And you all got together to your satisfaction. Thank you very much. I'm corrected about my statement about at the meeting. It was post-meeting.

    Yes, sir.

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

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

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

    MR. BROWN: As far as the trees they plan

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

MR. APPLEBY: Zoning ordinance requires the trees.

MR. BROWN: I'm sorry.

MR. APPLEBY: Our zoning ordinance requires the trees.

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

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

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

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

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

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

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

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

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

CHAIRMAN: Thank you very much.

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

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

MR. GILLES: Cedar would be nice.

CHAIRMAN: There's Mr. Gilles' input.

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

MS. SUBLETT: Yes. My name is Mary

Sublett.

(MS. MARY SUBLETT SWORN BY ATTORNEY.)

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

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and make a statement.

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

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

I personally would like to know what's going on in my community. I would like to know how to find that out. I would like to know what is a
criteria for the Planning & Zoning Commission that
stores must meet in order to build these places. If
you could help me with that, I would really appreciate
it. As I said, I've already learned a lot this
evening and I'm very grateful for it. Thank you.

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

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

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

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

We also notified adjoining property
owners. Anyone that actually would physically touch
the property that's being rezoned of the property, we
would notify them. That includes across public
rights-of-way. We also advertise in the
Messenger-Inquirer in terms of a small notification in
the legal section of the classified. Most of you
probably miss it. You don't read it and don't expect
that you would. That's a requirement by law that we
have to advertise that way.

All of our meetings are televised as well.

We have a website, IOMPC.org. On that website you can
gain access to all of our develop requirements, the
comprehensive plan for the community, contact any of
the staff. You can download any forms. Just a wealth
of information on that site. That's a way you can be
educated.

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

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

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

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

MR. NOFFSINGER: I understand that and I respect that. We all live busy lives. Some of you might have watched meetings on the television. This is a public body. All meetings are open to the public. If you have questions, you can contact any of our staff. I can tell you, Ms. Sublett, Becky Stone in our office, the planner that spoke here tonight and read the findings of fact, she'd be more than glad to sit down with you and go over the comprehensive plan and describe to you the business requirements that have to be met. I just met with 15 people this morning in the Citizens Academy with the City of Owensboro just started. That's to educate our citizens on how city government works. Fortunately I was invited to attend; although, we're not city employees. We're employees of the Planning Commission. I was invited to attend. I got to spend about an hour and a half. It wasn't near enough time.
talking with those 15 folks and educating them on the
planning process. There are ways to get involved.
Contact us at any time. Let us move on.

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

Yes, sir.

MR. ELLIOTT: State your name, please.

MR. HOWARD: Dennis Howard.

(MR. DENNIS HOWARD SWORN BY ATTORNEY.)

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

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

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

MR. NOFFSINGER: What we require, when the
applicants came in and sent a site finder, sent of
site finder to ask questions. They talked about he
proposal, the size of the store. Said, you're going
to need a traffic impact study that's prepared by an
engineer. We want to know what impact this
development is going to have along the roadways within
the community. Their engineers prepared this study.
I reviewed the study as well as the rest of the
Planning Staff. Green River Area Development District, the transportation planners for this community, they reviewed it. The State of Kentucky reviewed it as well as the City of Owensboro's engineer and the county engineer. Had opportunity to review it as well. Several qualified individuals I believe reviewed this plan. Wal-Mart was required or will be required to make improvements to the existing roadway as well as extend a local street, Mount Moriah, to connect with Fairview Drive and to connect with adjoining businesses.

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

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

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

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

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

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

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

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

The discount store they factored in 30
percent of that 14,000 would be pass by. They're
already there. For the Fuel Center 50 percent.
They're already there. I think 40 percent for fast
food restaurant or 50 percent. So they factored that
in. That there's not going to be an additional 14,000
cars out there. There's probably not going to be an
additional 7,000 cars daily. When you do factor all
of that in, they're factoring that additional traffic
right there at that signalized intersection primarily, but you're not going to have that many additional cars out at Thruston-Dermont Road at Commonwealth Court. That traffic is going to go in different directions. Those additional 7,000 vehicles some will come from the bypass. Some will come from Whitesville. Some will come from Fairview Drive over from Settles Road. Just different areas.

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

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

MR. HOWARD: My concern is as a tax payer. I live here in Owensboro/Daviess County. When Wal-Mart Super Center comes in and all of a sudden, you know, we've got to spend tax dollars expanding the road. Right now you have a bottle neck right there at Thruston-Dermont Road. What you're going to do is overload, in my opinion, overload it more than it already is in. If you've been by there or if you live
out that way and you head into work about 7:00, 8:00 in the morning, you will see what the schools and whatnot out there, the subdivisions, Premium Allied. There is a major problem with traffic out there. You've answered my question as far as the study. I'm very concerned about that. As tax payers, we don't want to end up picking up the bill to help expand the road if Wal-Mart should be doing it. I think that will be something that they should take a look at.

CHAIRMAN: Mr. Noffsinger, can you address that?

MR. NOFFSINGER: Yes. Wal-Mart will be picking up the bill on improving 54 and making transportation improvements. Just like Lake Forest picked up the bill for the decel lane that was constructed on 54 to get into their development. Development pays a portion of those development costs as they go. Does development pay all of the cost? No, probably not. They do pay a fair share, but we've got more than just a Wal-Mart that's affecting Thurston-Dermont Road. We have residential developments. That is hot up and coming. That's where people are wanting to move and live. There's additional traffic generated in that area because of all this development. There are
transportation plans to improve those roadways, but this community is faced with the situation just like other communities across the state. There's not money to fund those projects and they're not happening. So do we continue to grow, grow as we are where development pays a portion of that cost, or do they pay all, or do we say no to growth?

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

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

MR. NOFFSINGER: No, sir. That is not factored in. In fact, we cannot rezone based upon who
the user will be. It's what they're doing.

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

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

Kentucky Revised Statutes, the planning and enabling legislation dictates to this commission and other commissions across the state exactly what they can consider. In doing so, the statutes do not allow a community to rezone a piece of property because of who they are. It's strictly tied to land use, what they do. In this case, Wal-Mart is a retailer. Retail sales. They are a general business use. Just like the hardware store down the road in front of Thoroughbred East. They're also B-4 General Business and they're allowed to locate there as well. Wal-Mart generates more traffic than perhaps the
hardware store would. So there are different considerations and different requirements. The hardware store likely would not submit this traffic study. Wal-Mart obviously is required to because of what they generate. So it's not who they are. It's what they generate. This commission does not, they don't have the ability to factor in the economics of it because they're not allowed to by the statutes.

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

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

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

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

MS. HARAGAN: Would you like to have a copy of the petitions? I have a couple things to give Ohio Valley Reporting (270) 683-7383
CHAIRMAN: We will be glad to receive the petitions, but I think as Dr. Bothwell stated, I think Mr. Noffsinger went to great length to explain. The comprehensive plan states what regulations and stipulations, whether it's the developer that's developing a home, subdividing one lot to a family member, or Wal-Mart who is putting in a super shopping center must abide by. If they meet those certain criterias, then this commission has to rule according to meeting those rules and regulations. We cannot say, we'll not have a Wal-Mart, but yet we'll let somebody build homes. That's what the zoning does and the zoning states certain areas that homes can be built and certain areas Wal-Marts can be built, but not necessarily a Wal-Mart. Any store that meets that criteria.

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

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

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

CHAIRMAN: Yes, ma'am. They're covered in the Comprehensive Plan. They were gone over in the Ohio Valley Reporting (270) 683-7383
zoning meeting that we had.

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

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

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

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

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

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

CHAIRMAN: I believe we've had a pretty open forum at this time. Any new or different evidence that's not redundant, we'd be glad to hear from anybody. I think at the present time I think
we've pretty well covered for a development plan. I think we've pretty well covered most of these things. Most of these things were covered in the zoning hearing that we had before.

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

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

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

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

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

CHAIRMAN: Thank you.
MS. HARAGAN: Let me give you these.

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

MR. ELLIOTT: State your name, please.

MR. SMITH: John L. Smith.

(MR. JOHN SMITH SWORN BY ATTORNEY.)

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

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

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

Thirdly, as far as the traffic increase, I
lived in Houston, Texas, and if anybody hasn't been to
Houston, Texas, or to Atlanta, or to Washington, D.C.,
or New York, or Nashville, or Miami, or Dallas, or
Fort Worth, of San Antonio, which I've been to all for
lengthy amounts of time, they have no idea what
traffic is. I can promise you that. I can't ever
imagine that amount of traffic out on 54.

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

Wal-Mart benefits others as well. They
they benefit other retail. I'm not sure if I'm right
about this, but I believe Commonwealth Court is going
to cross over 54 onto the new shopping center. I'm
not aware of that, but that's what I've been told.
That's great. That's great for me. I live in a
commercial development. I chose to live there. I
will live and die in that commercial development and I
made plans to do that. I couldn't be happier where I
live. The only big issue I have about where I live is
harsh lighting. Something I wasn't able to address
before I moved there, which at that time it wasn't
there. Nonetheless, I've learned to live with it.

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

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

CHAIRMAN: Thank you very much.

If there are no further comments from
anybody, the chair is now ready for a motion.
DR. BOTHWELL: Mr. Chairman, I make a motion for approval of the proposed development plan, Number 7.

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

MR. ELLIOTT: Condition on rezoning.

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

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

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

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

MR. APPLEBY: Second.

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

CHAIRMAN: You want to amend his motion?

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

CHAIRMAN: With Dr. Bothwell's approval.

DR. BOTHWELL: May I hear it first before Ohio Valley Reporting (270) 683-7383
I accept it?

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

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

MR. CAMBRON: You're doubling the size
basically.

DR. BOTHWELL: Well, a little more.

Height and width and cost. Probably quadrupling it.

I think Wal-Mart should respond to that. No, I will
not accept that as my second until at least we've
heard from Wal-Mart how they feel about that.

CHAIRMAN: Wait just a minute. Dr.

Bothwell, you might be the only person in here that
could possibly restate that and get it right.

Let me ask Mr. Noffsinger. With Mr.

Cambron's, aren't we changing the development plan
pretty drastically with this --

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

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

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

CHAIRMAN: Did you take good notes on that
or would you like that stated in a little bit shorter
outlined form?
MR. BERRY: I didn't actually see it, but I believe I pretty much have the gist of it.

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

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

MR. BERRY: Yes.

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

MR. BERRY: May I come on up?

CHAIRMAN: Yes.

MR. CAMBRON: I guess you can, yes.

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

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

MR. CAMBRON: I haven't got that far yet.

We'll work on that.

(MR. BERRY APPROACHES BOARD AND CONSULTS WITH MR. CAMBRON.)
MR. BERRY: With not being a landscape person, I would really hate to answer that myself.

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

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

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

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

DR. BOTHWELL: I was going to withdraw my motion presently and let Mr. Cambron make a motion as to his change and what he wants to do landscape and let this commission vote on it, aye or nay. Then we
can move on to the development plan. I don't want
this attached to my - -

MR. JAGOE: Dr. Bothwell had a second to

his motion.

CHAIRMAN: We've already had a second?

I'm sorry.

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

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

Mr. Elliott, are we okay?

MR. ELLIOTT: Yes.

DR. BOTHWELL: Then I stand by my first

proposal.

CHAIRMAN: Did we get findings of fact and

subject to?

DR. BOTHWELL: Subject to the approval of

the zoning by fiscal court and findings of fact that

it meets the development plan and criteria.

CHAIRMAN: Where did we have our second?
MR. APPLEBY: Second.

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

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

CHAIRMAN: All opposed.

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

CHAIRMAN: The motion carries seven to one.

Next item, please.

MR. CAMBRON: No amendment, right?

CHAIRMAN: Dr. Bothwell's motion passed.

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

CHAIRMAN: Correct.

MR. CAMBRON: Okay.

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

ITEM 8

Meadow Run at Whispering Meadows, 5.989 acres

Ohio Valley Reporting
(270) 683-7383
Consider approval of amended major subdivision preliminary plat/final development plan.

Applicant:  O'Bryan Development, Inc.

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

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

The applicant is requesting that the condition be removed and the OMPC be allowed to issue additional building permits since we're holding surety so that he can construct the roadway improvements this construction season. I believe he has a time frame on the development plan of when those improvements are to be constructed. That should be in December. Yes.

The roadway shall be constructed by December 31, 2004.

The Planning Staff has reviewed and would recommend that this plan be amended to allow the sureties that he's posted with us to stand good for the roadway improvements and that additional building permits be issued up until December 31, 2004. If the roadway
improvements are not constructed and completed, then
we would no longer issue building permits until such
time as the improvements are installed.

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

CHAIRMAN: Any comments or questions from
the audience?

(NO RESPONSE)

CHAIRMAN: Any from the commission?

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

CHAIRMAN: Mr. Noffinger.

MR. NOFFINGER: Yes, sir, I do. I
believe that the applicant, the applicant is Mike
O'Bryan, will make these improvements. It is his
intention. He has posted surety with us. He posted
surety back several months ago with a final unit in
hopes that he would get the roadway improvements
constructed. It didn't work out that way. Now, he's at a point where 29 permits have been issued. He can't move forward. We're holding surety. We have that guarantee that the work will be done. If the work is not done this construction season, then we can go in and put forth the bond. The developer knows that.

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

MR. NOFFSINGER: Yes, sir, and you have every right to be. Let me tell you, there's no one currently pushing for these improvements to be made. Generally we do not have conditions placed on developments like this. Usually the surety is posted. We don't tie it do building permits. This was done originally because the developer, you know, instead of posting surety it was negotiated that there would only be this many homes constructed and then he would make the improvements. No one is pushing for it. Most folks aren't aware of the requirement, except the Planning Staff is certainly aware of the requirement. Legally we can't issue any more permits and we can't
allow him to move forward until we address this issue. The applicant is here tonight. I think he will state under oath for the record that he will make good on these improvements. If not, he should forfeit.

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

MR. JAGOE: Is chair ready for a motion?

CHAIRMAN: The chair is ready for a motion.

MR. JAGOE: Move to approve.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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MAJOR SUBDIVISIONS

ITEM 9

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

Consider approval of major subdivision final plat. Surety (Performance Bond) posted: $723,403.50

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. The plat is found to be in order. It's also been reviewed by the Engineering Staff. Found to be in order and it's ready for consideration.

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

CHAIRMAN: Are there any questions?

(NO RESPONSE)

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 10

Meadow run at Whispering Meadows, 5.989 acres

Ohio Valley Reporting
(270) 683-7383
Consider approval of amended major subdivision final plat.
Applicant: O'Bryan Development, Inc.

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

CHAIRMAN: Questions from the audience or the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.
MR. CAMBRON: Motion for approval.
CHAIRMAN: Motion for approval by Mr. Cambron.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 11

3230, 3233, 3239, 3240, 3245 Mount Moriah Avenue, 6.361 acres
Consider approval of major subdivision final plat.
Applicant: Mount Moriah Holdings, c/o Karen King

MR. NOFFSINGER: Mr. Chairman, Planning
Staff and Engineering Staff has reviewed this application. We find the application to be in order. This plat would supersede a previous plat that was approved by this commission that would have required Mount Moriah to be cul-de-sac and not intersect with Fairview Drive, provided Mount Moriah was extended out to Kentucky 54.

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

Planning Commission is holding surety to guarantee that this roadway will be cul-de-sac in the future. Planning Staff, based upon the Wal-Mart proposal, we're recommending that this plat be approved; however, we have reservations as to it being approved tonight. Because if Wal-Mart's rezoning does not pass the Daviess County Fiscal Court, then the Wal-Mart project doesn't go through, we're no longer, we no longer have an approved plan to cul-de-sac Mount Moriah. What I would recommend is that the Planning Commission authorize the planning director to sign the plat provided that the zoning change regarding the adjoining property for Wal-Mart is discussed tonight and is approved by the Daviess County Fiscal Court. I
just want to make sure that we don't have to go back
through a plat amendment or to get surety. I don't
want to relinquish what we have and what has been
agreed to should the Wal-Mart plan not be approved by
the Daviess County Fiscal Court. I certainly don't
want to delay the applicant here. That's why I ask
that you authorize the director to sign if that
rezoning goes through successfully.

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

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

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

MR. ELLIOTT: State your name, please.

DR. KING: Randy King.

(DR. RANDY KING SWORN BY ATTORNEY.)

DR. KING: I understand that it's been
brought to my attention that fiscal court has to
approve the zoning. Then based on the acceptance of
the Wal-Mart final development plan tonight that you
can make a vote on my final development plan which has
been submitted. I'm representing Mount Moriah Holding tonight.

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

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

MR. NOFFSINGER: Dr. King once I sign that
plat --

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

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

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

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

MR. CAMBRON: Second.

CHAIRMAN: Motion for approval by Dr. Bothwell. Second by Mr. Cambron. All in favor raise Ohio Valley Reporting (270) 683-7383
your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 12

Whispering Meadows, Unit #2, 8.022 acres
Consider approval of amended major subdivision final plat.
Applicant: O'Bryan Development, Inc.

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

CHAIRMAN: Any questions from the audience?

(NO RESPONSE)

CHAIRMAN: From the commission?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

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

CHAIRMAN: Motion carries unanimously.

Next item.

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MINOR SUBDIVISIONS

ITEM 13

712 Clay Street, 414, 418 East 7th Street, 0.364+ acres
Consider approval of minor subdivision plat.
Applicant: John L. Smith, Ethel Daugherty

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

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

CHAIRMAN: Any questions from the audience?

(NO RESPONSE)

CHAIRMAN: If not the Chair is ready for a motion.
MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 14

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

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

The remaining tract is about a 48 acre tract of land. The proposal is to reconfigure the existing 3.14 acre tract. In reconfiguring the lot, which has a house and a storage building on it, it would create a situation where the new lot would not meet the minimum frontage requirements on the public.
right-of-way. In fact, the frontage would be about 50
feet proposed which creates what we call and what we
looked at as being flag type lot. It also sets up the
opportunity for more non-conforming lots to be created
on both sides of this new lot. Because this property
does not meet the requirements, minimum requirements
of road frontage at the building setback line, which
is 100 feet, and it creates a lot that is more
non-conforming than what we have now as well as
creates an opportunity for additional non-conforming
lots to be created, Staff recommends the division not
be approved.

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

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

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

DR. BOTHWELL: Exactly.

CHAIRMAN: Are there any comments or
questions?

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

DR. BOTHWELL: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

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

CHAIRMAN: Wait a minute. Is the applicant here, somebody representing the applicant? Would you like to make a statement?

MR. CECIL: Yes.

MR. ELLIOTT: State your name, please.

MR. CECIL: Paul Cecil.

(MR. PAUL CECIL SWORN BY ATTORNEY.)

MR. CECIL: We understand that the lot does not comply now. It does not comply in the future. The owner is trying to accommodate his son who has no need for the more road frontage. He bought the land at auction and it was a bad configuration at that time. He's trying to make it more appealing. Take in a septic area, some storage buildings. We presented Becky Stone's suggestion to him. If we went with that suggestion, he has an adjoining lot and that
would not be able to access his back 30 acres or so because there's a pond on one side I think that's shown on that drawing. He still uses that land for farming activity. He's just trying to accommodate a better configuration for a home lot. He doesn't have any further developmental plans. He just wanted to make it a better looking lot for his family, his son. That's all I have.

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

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

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

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

CHAIRMAN: Ms. Sstone.

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

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

MS. STONE: Right.

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

MR. CECIL: I told them what the rules
were, yes. He wanted me to make sure that you understood it was a family thing and that those were his concerns. Not developmental, but just to accommodate his son trying to have a lot that took in those buildings and his lateral lines.

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

CHAIRMAN: Correct.

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

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

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

This one goes all over the place.

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

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

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

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

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

DR. BOTHWELL: Motion not to approve.

CHAIRMAN: Motion for not approval by Dr. Bothwell.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 15

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

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

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

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

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

MR. NOFFSINGER: We have two here now.

DR. BOTHWELL: But you have two access points. Now we're going to give up one so you're down to one access going into this property. If I'm reading these lines correctly, here's the house where
it sits. They're going to run that out to take out
the U-shape. So you're going to be left with just
this piece of property fronting the road where
currently it has two access points.

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

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

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

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

MR. JAGOE: This one meets some of the
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regulations, correct?

         CHAIRMAN: Very well put.

         MR. JAGOE: Some flags we look at and make

         - -

         MR. NOFFSINGER: Very good.

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

         MR. NOFFSINGER: Yes, sir.

         MR. JAGOE: So you only get two strikes.

         MR. CAMBRON: Is Chair ready for a motion?

         CHAIRMAN: Chair is ready for a motion.

         MR. CAMBRON: Motion for approval, Mr.

Chairman.

         CHAIRMAN: Motion for approval by Mr.

Cambron.

         SISTER VIVIAN: Second.

         CHAIRMAN: Second by Sister Vivian. All

in favor raise your right hand.

         (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

         CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 16

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

MR. NOFFSINGER: Mr. Chairman, the 

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

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

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

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

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

MR. NOFFSINGER: This particular piece of property is located on a private street in the Carpenters Lake area. A private street was developed back many years ago. The property comes before you because it does not have frontage on a public right-of-way. It's a plat that I can't sign. There are other lots that front along Southgate Drive which is a private street; however, I do not have the ability to approve them. Now, granted Tract Number 1 is a very odd shaped lot, it does meet all minimum requirements of a subdivision regulations in that it meets the depth to width ratio three to one and frontage. It's just the frontage is not along the Ohio Valley Reporting (270) 683-7383
public right-of-way, but there are other lots within
this area along this street. So with that Staff
recommends that it be approved.

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

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

CHAIRMAN: Thank you, Mr. Cambron.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 17

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

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

MR. CAMBRON: This one is unusual.

MR. NOFFSINGER: We have two existing homes that are located on a single lot. Historically they have been, this situation has been as it is today. Staff is recommending approval even though the lots do not meet the minimum lot frontage requirement.
of 50 feet. There are other lots within the area that
have less than 50 feet of frontage, and the fact that
there are two homes that are in sound condition. We
recommend it be approved.

CHAIRMAN: Are there any questions or
comments?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

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

CHAIRMAN: Motion for approval by Mr.
Cambron.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

SURETY RELEASES

ITEM 18

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

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ITEM 19

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

ITEM 20

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

ITEM 21

Home Depot, $4,320.00
Consider release of surety (Performance Bond) for landscaping.

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

DR. BOTHWELL:  Motion for approval.

CHAIRMAN:  Motion for approval by Dr. Bothwell.

MS. DIXON:  Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries unanimously.

Next item.

SURETY TRANSFERS

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ITEM 22

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

ITEM 23

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

ITEM 24

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

ITEM 25

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

ITEM 26

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

ITEM 27

Cross Creek, 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

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ITEM 29
Mid-America Airpark, Unit #2, $255,172.60
Transfer of letters to the City of Owensboro for public improvements.
Letters from: City of Owensboro, OMU and RWRA

ITEM 30
Mid-America Airpark, Unit #3, $111,403.60
Transfer of letters to the City of Owensboro for public improvements.
Letters from: City of Owensboro, OMU and RWRA

ITEM 31
Mid-America Airpark, Unit #5, $16,720.00
Transfer of letters to the City of Owensboro for streets.
Letters from: City of Owensboro

ITEM 32
Mid-America Airpark, Unit #7, Phase 1, $178,442.60
Transfer of letters to the City of Owensboro for public improvements.
Letters from: The Chamber of Commerce and Industry, Inc., JDQ, City of Owensboro, OMU and RWRA

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

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.)

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CHAIRMAN: Motion carries unanimously.

Chair is ready for one last motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 105 typewritten pages; and that no signature was requested to the foregoing transcript.

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

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

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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