

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 SEPTEMBER 9, 2004

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4 The Owensboro Metropolitan Planning

5 Commission met in regular session at 6:00 p.m. on

6 Thursday, September 9, 2004, at City Hall, Commission

7 Chambers, Owensboro, Kentucky, and the proceedings

8 were as follows:

9 MEMBERS PRESENT: Drew Kirkland, Chairman
Gary Noffsinger
10 Nick Cambron
Dave Appleby
11 Scott Jagoe
Sister Vivian Bowles
12 Judy Dixon
Dr. Mark Bothwell
13 Stewart Elliott,
Attorney

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16 CHAIRMAN: I would like to welcome

17 everybody to our September 9th Owensboro Metropolitan

18 Planning and Zoning Commission meeting.

19 Our invocation tonight will be given by

20 Dr. Mark Bothwell. Please stand.

21 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

22 CHAIRMAN: Our first order of business

23 will be our minutes from our last meeting. Are there

24 any corrections, questions?

25 (NO RESPONSE)

Ohio Valley Reporting
(270) 683-7383

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

3 MR. CAMBRON: Move for approval, Mr.
4 Chairman.

5 CHAIRMAN: Motion for approval by Mr.
6 Cambron.

7 DR. BOTHWELL: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, Mr. Noffsinger.

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14 PUBLIC HEARING

15 ITEM 2

16 Consider text amendments to the Owensboro Metropolitan
17 Zoning Ordinance, addition of Article 21, Central
18 Business Overlay Districts, Revisions to Article 8,
Zones and Uses Table.

19 MR. NOFFSINGER: Mr. Chairman, Planning
20 Staff in conjunction with the Staff and City of
21 Owensboro and the Daviess County Fiscal Court has
22 prepared for your consideration tonight an overlay
23 district for the B-2 zone. This is in an area that is
24 bordered by the Ohio River on the north, Veterans
25 Boulevard and south of Veterans Boulevard I think for

1 a distance of about 150 feet. It extends from Daviess
2 Street on the east and St. Elizabeth Street on the
3 west.

4 As we all know and aware, the City of
5 Owensboro and this community is looking at developing
6 the waterfront, redeveloping our waterfront. They
7 have a master plan that has been prepared to see that
8 plan through. We're already seeing some work on the
9 river front from the Riverpark Center patio expansion
10 on the east to the Executive Inn on the west with the
11 addition of a stage and the west plaza that was
12 recently dedicated by the City of Owensboro. I think
13 that's just a small amount of what is about to come.
14 From what I can tell and gage, the community is very
15 supportive of what's taking place.

16 In an effort to protect the community's
17 interest, an investment within this area, this overlay
18 district was created to protect that investment as
19 well as to give property owners in the area some
20 assurance as what types of uses might occur within
21 this district and how they would impact our
22 waterfront.

23 The Planning Staff looked at ways to go
24 about protecting these districts and protecting the
25 property owners investments and to make sure that

1 whatever is done would be in compliance with our
2 adopted comprehensive plan and other plans that have
3 been prepared for this area.

4 Tonight we present to you a plan that
5 would do just that. I'd like to ask Becky Stone that
6 drafted this amendment to speak very briefly on the
7 contents of the amendment and what it would do.

8 MR. ELLIOTT: State your name, please.

9 MS. STONE: Becky Stone.

10 (MS. STONE SWORN BY ATTORNEY.)

11 MS. STONE: The addition of Article 21
12 will provide a development strategy that hopefully
13 will enhance the success of the river front
14 development that's beginning to be implemented in
15 Daviess County. Of course, additionally Article 8 had
16 to be revised to reflect the addition of the Veterans
17 Boulevard overlay district.

18 The goals and objectives of the
19 community's Comprehensive Plan and the downtown plan
20 suggest that land uses along Veterans Boulevard should
21 focus on business and cultural uses, promote
22 waterfront development and enhance recreation and
23 tourism. Residential uses are identified as desirable
24 in the vicinity of downtown, but not so as to conflict
25 with river front festive events.

1 The plan physical improvements that the
2 City of Owensboro is beginning to implement with the
3 Riverpark patio expansion and construction of the west
4 plaza portion of the plan need to be augmented by
5 recreational programing and a development strategy for
6 this area in order for the river front plan to be
7 successfully implemented.

8 There is a major public commitment to
9 implement the physical plan creating these public
10 spaces and the proposed revisions to the zoning
11 ordinance have been prepared to provide a development
12 policy that will assist in the success in this venture
13 for the benefit of the community.

14 This area is zoned B-2 Central Business
15 District. Typically that district allows a wide
16 variety of residential professional and business
17 uses. Generally the Veterans Boulevard overlay
18 district that we are proposing restricts the uses on
19 the ground floor areas along in this general area and
20 allows residential and professional office uses to be
21 located above the ground floor over another permitted
22 use. Permitted uses generally in this area are uses
23 that would enhance that active area downtown and they
24 would include restaurants, entertainment and specialty
25 retail uses.

1 That's generally what's been proposed in
2 the plan. If there's any questions, I would be glad
3 to try to answer them.

4 CHAIRMAN: Do we have any questions from
5 the audience?

6 DR. READER: Yes.

7 MR. ELLIOTT: State your name, please.

8 DR. READER: Scott Reader.

9 (DR. READER SWORN BY ATTORNEY.)

10 DR. READER: If someone owns property
11 there now, would these restrictions apply to them if
12 they developed the project?

13 CHAIRMAN: Dr. Reader, would you restate
14 your question?

15 DR. READER: If someone owns property now
16 in that district and they were to develop the project
17 themselves, would it have to follow these guidelines
18 or would it only apply if they resold the property to
19 someone else? Because it did say something about
20 existing businesses would be exempted.

21 MS. STONE: The uses that are currently in
22 that area would become non-conforming with the
23 adoption of the new ordinance and those uses could
24 continue; however, development of a new project would
25 require adherence to the regulations.

1 DR. READER: If you put up a new building
2 it would be - -

3 MS. STONE: Yes.

4 DR. READER: Even though it was owned by
5 the people who owns the property now?

6 MS. STONE: Yes, if you change the use of
7 the property.

8 DR. READER: Thank you.

9 CHAIRMAN: Thank you, Ms. Stone.

10 MR. MEYER: I'm Tom Meyer and I'm part
11 owner of a piece of property.

12 (MR. TOM MEYER SWORN BY ATTORNEY.)

13 MR. MEYER: As you probably all know, our
14 law offices are there. I've been located in the
15 building at First and Allen Street since 1982. We
16 operate our law practice out of that building.

17 We are very much opposed to the passage of
18 this regulation. We think that in spite of the fact
19 that they say that it will protect our interest and
20 protect our property, we believe exactly the opposite
21 because it will limit the future uses of the property
22 and potential purchasers of the property down the road
23 if we should choose to sell, which I have no intention
24 of doing.

25 We spent a lot of money developing our

1 property. In this particular instance, in the area
2 that they're talking about, which only extends back
3 150 feet off of Veterans Boulevard, the type of uses
4 that they're preparing to legislate here there's
5 actually only one use in that entire area that's
6 presently being made and that's the Mexican restaurant
7 at the corner of First and Frederica Street or
8 Veterans and Frederica Street. That's a particular
9 location that's had I think in the last 20 years five
10 different owners and operators; although the Mexican
11 restaurant seems to be doing quite well right now.

12 If this was such an important feature as
13 an economic development, economic development would
14 have already driven these type of businesses down into
15 that area. All of these same type facilities are
16 already available. One block back on Second Street
17 where you have the Greek restaurant, the Bistro,
18 several bars and restaurants. You have a T-shirt shop
19 and things of that type all of which are open to the
20 public.

21 There certainly is, and this commission
22 should take recognition of this fact, the city already
23 owns one piece of property down there that if they
24 wanted to make available to a developer to develop
25 these type they could do so. They brought the

1 property right across the street from the Riverpark
2 Center that used to be Ed Bell's office building.
3 There are other properties that are down there for
4 sale. The free market ought to really be what drives
5 this thing. Not any legislative purpose where you
6 have to put this type of facility on the first floor.

7 We were told tonight in questions before
8 the meeting, we were asking the Staff, we have a
9 parking lot that we own that's right next to our
10 building there and if we chose to expand our law
11 office into that space by doubling the size of the
12 building, we'd no longer have the right to do that
13 without putting a restaurant or T-shirt shop or
14 something else open to the public on the first floor.
15 I think all of you all can recognize that the
16 economics of putting that type of a shop in that space
17 is self-defeating, if you will. We would have to go
18 and get special exceptions in order to develop the
19 property that we have just like Dr. Reader asked even
20 though we're already using that as a professional
21 service building. So we think that if anything ought
22 to drive this it ought to be the free market system
23 and the economic development.

24 We don't believe when we were asked to go
25 to a meeting and luncheon they were talking to us

1 about, well, this will really help your neighborhood
2 because it will keep tattoo parlors from coming in
3 there and pawn shops and things of that type. Our
4 response to that was the mere economic realities of
5 the situation on what property cost on Veterans
6 Boulevard is going to keep those type of undesirable
7 locations out of there anyway because you can't come
8 in and buy a piece of property from Dr. Reader and put
9 a tattoo parlor in there. It just doesn't work.

10 We know, we've been told about what
11 grandfathering involves and grandfather uses, but was
12 already explained to us earlier tonight while we may
13 be able to grandfather our professional office
14 services in there and maybe it would not be just
15 limited to attorneys, but CPA's could buy the
16 building. If anybody else attempted to do anything of
17 that type or if we ourselves attempted to develop an
18 adjoining lot, we're going to be subjected to these
19 same restrictions and uses.

20 I understand that the city feels like
21 they've put a lot of money into developing that park
22 down there. That park is open to the public and
23 that's exactly what it's for. There's a lot of other
24 civic activities that goes on down there that we
25 support. Some of which cause, you know, modest

1 digress of inconvenience for us.

2 When the barbecue festival moves in there,
3 we turn over our parking lot for three days for that
4 purpose. We have clients that we tell don't bother
5 coming down here during this mess because starting on
6 about Wednesday or Thursday they block off the street.
7 That's just one time a year.

8 Friday After Five, nowadays they want to
9 start putting up the parking barricades about 12 or
10 1:00 in the afternoon and when we have clients trying
11 to get down there it's more and more difficult to do
12 those kind of things.

13 We've kind of rolled with the budget there
14 as part of our civic responsibility. We put up with
15 that kind of thing. But then to come in and legislate
16 that we can't use a building that we have owned and
17 developed and put hundreds of thousands of dollars in
18 just because it doesn't meet some of these public uses
19 that they think ought to be made to the property is
20 really unjustified taking of our properties and our
21 rights without any due process.

22 We don't think that - - if this thing was
23 really something that was driven by economic
24 development, you would see it down there happening
25 already. But if you stop and think and work your way

1 down the street, there is none of that right now that
2 is taking place, but if the opportunity or if somebody
3 wants to do that, there's a piece of property right
4 next to Ron Sullivan and Jesse Mountjoy's building
5 that's for sale. I think the property where Dr.
6 Reader referred to across the street from us between
7 us and the America Legion has been up for sale a
8 number of times and probably can still be bought. The
9 city already owns a third of our block as it is
10 anyway. The opportunities are there for that kind of
11 development. We think that the fair market system
12 ought to develop that as economic realities persist
13 and not just to legislate that this has to be the way
14 it is and the only way that it is.

15 We would respectfully request that you not
16 pass any such regulation to interfere with the free
17 use of this property.

18 CHAIRMAN: Thank you, Mr. Meyer.

19 Anybody else that has a comment?

20 Dr. Reader, would you like to return?

21 DR. READER: Yes. I'd like to make a
22 couple of comments.

23 We have had this property for several
24 years. We've tried to develop as much as we could
25 within our limited budgets. We've had several

1 interested parties over the past few years to develop
2 projects and for whatever reasons they fell apart.

3 We offered this property to the city
4 within the past few months at a price which was below
5 the appraised value of the property and the city said
6 they were very interested. Sent us a letter saying
7 they were willing to purchase it. Apparently there
8 was some private discussion between city members and
9 some developers and said at that time the developers
10 are working on a project which to go on the parking
11 lot. This deal has not been concluded. There are
12 still a lot of things and other people that have been
13 interested.

14 We feel that we made an offer to the city
15 and they accepted and then backed out because private
16 developers were coming in with a project. We think
17 it's inappropriate for the city to pass an ordinance
18 now which would restrict something which they were
19 trying to encourage.

20 The city was also offered some of the
21 other buildings. The county has been offered the
22 building, but then again we were told that there - -
23 we had a letter obtained from the city that they would
24 not honor it any more because of the private
25 developer's interest. So now in a situation where the

1 city has offered to buy the property, gave us a letter
2 of intent, then backed out because of the private
3 developer and now they're trying to restrict what the
4 private builder might do. I think that's
5 inappropriate and interferes with our property rights.

6 We've been down there for several years.
7 We came down there before a lot of people were
8 interested in trying to do retail down there. I don't
9 think it's fair to penalize us and take away some of
10 the value of our property because of this.

11 There is adequate space in buildings along
12 Second Street for doing a lot of these projects. I've
13 already talked to the city manager about retaining the
14 parking lot doing projects in the 101 building and the
15 105 building or someone can come in and tear those
16 down and develop another project. Take the whole
17 block down.

18 In the past we've had people come and do
19 analysis of buildings and then we find people saying
20 in that newspaper that the buildings were structurally
21 unsound; although, there was a developer's proposal to
22 do the buildings. The engineers from the state and
23 the city have already reviewed these buildings.

24 There's been a lot of conflict in what the
25 city wants to do and doesn't want to do. I think it's

1 inappropriate at this time for them to restrict uses.

2 Basically this is aimed at two properties.

3 I doubt that the attorneys are going to tear down
4 their buildings unless someone made them a really
5 wonderful offer. Gave them a condo or highrise on the
6 tenth floor or something like that and really nice
7 parking facilities.

8 I think that you should allow the public
9 to use the - - I think it's been great the interest
10 that's been shown downtown. I think that it's going
11 to be a really nice facility down there, but I think
12 there's other adequate measures to allow enterprise of
13 existing buildings or tear down buildings that are
14 already existing and not restrict development of new
15 projects.

16 We paid for sidewalks down there. We pay
17 taxes as much as we could and sometime's been
18 difficult. We've tried to be good citizens. We've
19 allowed the barbecue festival to use our parking lot
20 each year and use the facilities. I think it's
21 inappropriate to restrict our rights.

22 CHAIRMAN: Dr. Reader, a question of you.
23 You said that the city had signed a letter of intent
24 with you all to possibly purchase your property,
25 right?

1 DR. READER: They did offer a price of
2 intent and we were doing some final minor negotiations
3 and then the city - - we didn't hear that. I called
4 and talked to Mr. Payne as to why they had backed off.
5 He said this wasn't of their utmost priority to buy
6 this piece of property. He said, well, we don't have
7 money now. Then we found out through other people
8 that they had backed off because of private
9 development and they are interested parties within the
10 city government who have interested parties outside
11 the city government who would benefit from - -

12 CHAIRMAN: Wait a minute, Doctor. Here is
13 where I'm going with the question. You had a letter
14 of intent with the city to purchase the property?

15 DR. READER: That's correct.

16 CHAIRMAN: Did a private entity approach
17 you?

18 DR. READER: No. They approached someone
19 within the city who has ties to outside interest.

20 CHAIRMAN: So, in other words, you had not
21 been approached about any other business buying your
22 property?

23 DR. READER: Not by these particular
24 people, no. City officials have relatives who are
25 involved in this. City people.

1 CHAIRMAN: That's really nothing.

2 DR. READER: Because city officials
3 interfered - - people let outside people interfere
4 with the city's business.

5 CHAIRMAN: Where I was headed with my
6 question was, one, you had the city that was
7 interested in purchasing your property.

8 DR. READER: And a letter of intent.

9 CHAIRMAN: And a letter of intent. I had
10 wondered, I was not able to follow you there to see if
11 the outside interest of a private entity was then
12 contacting you to purchase your property.

13 DR. READER: No. They contacted the city
14 to block the purchase by the city.

15 CHAIRMAN: Have they made an offer to you?

16 DR. READER: No.

17 CHAIRMAN: What would be the nature of
18 that business or do you even know?

19 DR. READER: I don't know. I presume it
20 would be - - I've heard that it would
21 restaurant/retail combination. Possibly some
22 residential.

23 CHAIRMAN: So it would fit within the
24 proposed zone?

25 DR. READER: Well, not necessarily if the

1 first floor wasn't - - if the first floor were
2 residential it would not.

3 CHAIRMAN: I thought you said restaurant.

4 DR. READER: This was also involving
5 existing buildings.

6 CHAIRMAN: Does anybody else have any
7 comments?

8 Are you finished, Dr. Reader?

9 DR. READER: Yes.

10 CHAIRMAN: Does anybody else have any
11 comment?

12 MR. ELLIOTT: State your name, please.

13 MR. SULLIVAN: Ron Sullivan.

14 (MR. RON SULLIVAN SWORN BY ATTORNEY.)

15 MR. SULLIVAN: I'm a member of the 100 St.
16 Ann, Limited Liability Company which owns the office
17 building at 100 St. Ann Street where our law firm is
18 located, the law firm of Sullivan, Mountjoy, Stainback
19 & Miller, which is the tenant of our LLC.

20 A few years ago we decided to make what we
21 consider a very substantial investment in Owensboro
22 and in our area by improving our building, by
23 renovating our building that had been built in '64 and
24 then gone into tremendous disrepair both internally
25 and externally. We have now completed that renovation

1 and we're very proud of what we have both being
2 tenants there and as an asset to the community and in
3 improving the neighborhood.

4 In that facility there is about 40 people
5 who work there who are available to use what is
6 available downtown for eating or entertainment and so
7 forth. It's those people that make the downtown work.
8 People who are downtown working that make the other
9 entities downtown. We support them by using them.

10 The economics of this proposal, which we
11 opposed, we oppose this proposal. The economics of
12 this proposal is to build or to create a situation in
13 that area that economically is dependent upon
14 something other than itself. There's no way that the
15 type of businesses that this ordinance calls for on
16 the lower level of that neighborhood can support
17 themselves. They have to be supported by lower rents
18 that people owning the property and the upper levels
19 of those properties provide to that type of facility.

20 Currently the neighborhood has been
21 available to that type of facility for these many
22 years and they haven't come there because it's not
23 economically feasible for that type of business to be
24 in that neighborhood.

25 If this ordinance is passed, it will in

1 affect diminish the value of our property as well as
2 the other properties on that street. To the extent of
3 the diminution of value in our property is less than
4 the diminution of the value of the property such as
5 Dr. Reader's that is not developed yet and would only
6 be able to be developed under the new program.

7 Our grandfathering provisions in this
8 ordinance would be helpful to us, but would not be a
9 total solution because we would not be able to in the
10 future take advantage of something that might occur
11 that would change the character of the use of our
12 facility. Someone want to come in there and utilize
13 our area to build a big hotel or facility, whatever,
14 then they couldn't, under this ordinance they couldn't
15 do it without complying with this ordinance, and that
16 is giving up the first floor to businesses that don't
17 appear to be able to afford it.

18 As of just yesterday, the interpretation
19 of the statute of the ordinance was such that we
20 couldn't change our use of our building from an
21 attorneys office to an accountants office. Now,
22 that's what we were told yesterday. That we couldn't
23 two years from now under this ordinance turn it over
24 to Riney Hancock for an accounting office without
25 Riney Hancock turning the first floor into these

1 retail establishments which would knock the whole deal
2 right into the top hat.

3 Now, as of today Mr. Noffsinger says we're
4 interpreting it different, but if there's enough
5 confusion in the way this thing is drafted, that as of
6 yesterday that was the decision. That's too much for
7 us lawyers to want to be a part of.

8 CHAIRMAN: Excuse me, Mr. Sullivan. I'm
9 getting an echo. I can't hear. Thank you. I think
10 that will do.

11 MR. SULLIVAN: We think that this
12 approaches a taking of our property. Depending upon
13 what type, what the situation is on your property in
14 that neighborhood is the quantum of the taking. We
15 don't think that it's appropriate for the government
16 to come in and to oppose these restrictions on our
17 property to this extent, to impact on us to this
18 extent adversely and economically.

19 CHAIRMAN: Mr. Sullivan, may I ask you a
20 question? I believe I understand where you're going
21 with this. What would you suggest from your
22 standpoint would be a fair ordinance?

23 MR. SULLIVAN: One that doesn't take away
24 the rights that we have on our building. That is the
25 right we have in our building is to use it for the

1 current classifications for the B-2 Central Business
2 district. If you diminish those rights by imposing on
3 us an obligation where we have to change the first
4 floor into a retail outfit, then - -

5 CHAIRMAN: You understand that that
6 wouldn't be imposed upon you?

7 MR. SULLIVAN: It wouldn't be imposed upon
8 our law firm as long as our law firm is used as a law
9 firm. As of yesterday, if it were used for any other
10 purpose, even an accounting firm, it couldn't be used
11 without changing that first floor to make it available
12 for these types of facilities.

13 Again, that's an interpretation situation
14 which anything that that's obscure, that the draftsman
15 yesterday thought that it couldn't be done, is not in
16 a condition where it ought to be adopted by anybody.

17 CHAIRMAN: Would you mind if I'd ask you
18 to sit down for a moment and we'll bring Ms. Stone
19 back and get immediate clarification or do you have
20 some other points you'd like to make?

21 MR. SULLIVAN: Any clarification you make
22 is not going to change the fact that yesterday the
23 opinion was this and today the opinion is something
24 else.

25 MR. NOFFSINGER: I might because I'm

1 certainly not the draftsman, but I was the one giving
2 the opinion.

3 I do believe I instigated that
4 conversation over lunch one day with one of your
5 partners in hoping to describe the ordinance and we
6 had that discussion. I wanted to give a very strict
7 interpretation because I didn't want to leave you with
8 an impression, your partner with an impression that
9 you could do something that you couldn't. I said,
10 however, we need to sit down and go over this very
11 issue. Then I talked with another one of your
12 partners yesterday and said, we would be glad to sit
13 down with you and talk with you about it. I did. I
14 gave an example of if an attorney's office were to
15 change, leave there and you had an accountant's
16 office, that likely would not be a change that the
17 staff could approve; however, you could go to the
18 board of adjustment on an administrative appeal from
19 one non-conforming use to another. After researching
20 and talking with our attorney, I realize this was a
21 conversation that happened yesterday afternoon. After
22 talking with our attorney, I came to you and gave you
23 the interpretation after consulting with legal
24 counsel. I don't think the ordinance leaves much
25 confusion. I think it's very straightforward and

1 clear cut in outlining the specific uses that would be
2 allowed.

3 As I discussed with you, Mr. Sullivan, you
4 were unaware that there was an opportunity for a
5 change in one non-conforming use to the other. I
6 pointed out Article 4 of the zoning ordinance which
7 allows you to change from one non-conforming use to
8 another by appealing to the board of adjustment. If
9 you make your case, then the board of adjustment has
10 the opportunity to approve that use or not. Certainly
11 your used today is grandfathered in.

12 When you talk about a taking and you talk
13 about the uses that are allowed to be conducted there
14 today, the uses that are allowed today were much
15 different than the uses that predate zoning. Zoning
16 is very much associated with property values. It can
17 go both ways. It's there to protect. It can also
18 limit the use that you can handle in property.

19 I would say back prior to the adoption of
20 zoning ordinance and zoning this B-2, I'm sure folks
21 had some concerns about restricting their property
22 rights because when properties were zoned standards
23 were made that restricted property rights at that
24 point.

25 That's what we're talking about here

1 tonight. We're talking about these property rights to
2 protect the public welfare. Now, zoning has been
3 found to be constitutional. You can zone and zoning
4 is found to be constitutional. We do it in many
5 communities. We've done it here for many, many years.

6 The public welfare is what is at stake
7 here. We have findings of fact that will need to be
8 read into the record if the Planning Commission
9 chooses to move forward with this ordinance, but it's
10 the public welfare.

11 Obviously there are three areas that we
12 address in zoning to make it constitution; the public
13 health, the public safety and the public welfare. We
14 hear a lot about it's all about children. Well, here
15 it's all about the public. It's about the public
16 welfare and the public's investment into this area.
17 This ordinance is created to protect the public's
18 investment and the public's interest. Hopefully this
19 won't become a backyard, waterfront development
20 backyard for a few people. That the public will
21 actually benefit from the investment that they're
22 pouring into the waterfront development. The
23 ordinance is crafted to increase we feel property
24 values. It's consistent with the comprehensive Plan.
25 It's consistent with the Owensboro Master Plan, the

1 Downtown Owensboro Action Plan and Downtown Design
2 Guideline. These guidelines are not something that
3 the Planning Staff came up with with the City of
4 Owensboro staff and just a select few people. We've
5 been discussing these for many months. In fact, Pride
6 had an informational gathering meeting, public meeting
7 and took public comments. That's where this came
8 from. From meetings, public meetings and not just out
9 of the blue. I know you understand that. I do feel
10 very strongly about it in terms of protecting the
11 public's interest and the public welfare. I also
12 respect your rights as a landowner. We've tried to
13 craft an ordinance here, an amendment that would
14 protect the public's interest and also respect your
15 rights to continue your current use and to market your
16 property in the future.

17 DR. BOTHWELL: Mr. Chairman, I have a
18 question.

19 CHAIRMAN: Dr. Bothwell.

20 DR. BOTHWELL: Mr. Sullivan, if the
21 interpretation is thus that you could sell it as a CPA
22 office instead of a law practice, does that change
23 your opinion about the ordinance?

24 MR. SULLIVAN: No, because we'd like to be
25 able to sell it if a bank wants. We'd like to be

1 able to sell it if a hotel wants it. We'd like to be
2 able to sell it if an insurance company wants it. We
3 don't feel that - - we still don't support the matter.
4 Did I respond to your - -

5 DR. BOTHWELL: Yes, that answered my
6 question. Thank you.

7 CHAIRMAN: Mr. Sullivan, those items that
8 you listed, Mr. Noffsinger, would you address, you
9 know, he went into if the bank wanted it, if a hotel
10 wanted it. Some of those items - -

11 MR. NOFFSINGER: If a bank wanted it, they
12 would appeal to the board of adjustment. Change from
13 one non-conforming use to another because a bank is in
14 a different use category as a professional office.

15 Now, a professional office, if it's an
16 accounting office, if it's an insurance office, it
17 fits into that same use category then it's permitted
18 by right. A hotel I believe would be allowed by this
19 ordinance because with a hotel you're likely to have a
20 lobby, restaurant facilities and whatnot on the first
21 floor and then your actual rooms would be on the
22 higher floors. It does limit that use, but there are
23 many uses that are similar in nature to the current
24 use that would be allowed without going to the board
25 of adjustment.

1 I'd just ask if legal counsel concurred
2 with that?

3 MR. ELLIOTT: Gary, I'm going in a
4 situation where I'm a property owner close to this
5 area so I probably should not participate or answer
6 that. I think I have a conflict.

7 MR. CAMBRON: Let me make a comment here,
8 Mr. Noffsinger.

9 The more I think about this and the more I
10 look at the property that's down there, my thoughts is
11 that I think free enterprise and the value of the
12 property that's down there now is going to drive what
13 needs to be down there. I don't think doing what this
14 ordinance is going to call for is what we need. I
15 think whatever goes down there is going to have to be
16 something that can sustain itself. I agree with that.
17 A tattoo parlor or something is not going to make it
18 down there. You can't pay half a million dollars for
19 a piece of property and just have one retail business
20 there. I feel like this ordinance is not the right
21 ordinance for this particular property down there due
22 to time and money will take care of itself down there.

23 DR. BOTHWELL: Mr. Sullivan, now that
24 you've heard that maybe some other uses would be
25 permitted, you know, uses of your building, does that

1 change your opinion again?

2 MR. SULLIVAN: No, it does not. No matter
3 how you tweak it, it still constitutes a restriction
4 on the use of the property. It's the government
5 coming in and saying, we're going to subsidize this
6 type of enterprise on that lower level by placing the
7 weight of it on the backs of the people that own that
8 property at this time. Of course, zoning is legal,
9 but when zoning gets to the point where, and I didn't
10 say get - - when zoning gets to the point where it
11 renders the use of your property economically not
12 feasible, when it destroys the economic feasibility of
13 your owning that property that you own over there
14 because you can't sell it for the use with the
15 investment that you have in it, the money you have in
16 it, then you've gotten to the point where you may be
17 in what we call reverse condemnation where the city is
18 action is in affect taking of their property and they
19 seek a reverse condemnation and they say, okay, you
20 take the property because you've done that. Now pay
21 us for it. There are such provisions that can arise,
22 according to the United States Supreme Court. Whether
23 it's arisen in this instance - - we know zoning is
24 valid. We also know that zonings are taken. You've
25 got one side public rights and you've got the other

1 side our personal individual property rights. Here I
2 think the proposed program so infringes on property
3 rights of the property owners in that neighborhood as
4 to make from a legislative - - you're in a legislative
5 communal now. You're sitting here not as judges but
6 as legislators as to whether you want to adopt a law.
7 As legislators you need to consider the property
8 rights that you are infringing on with this
9 legislation.

10 CHAIRMAN: Mr. Sullivan, I believe if I
11 understand what you're saying, the word grandfather,
12 which I'm sure you understand, but you would rather
13 have not grandfathered in your existing rights. You
14 would like to be grandfathered in your existing
15 zoning?

16 MR. SULLIVAN: That's about the size.

17 CHAIRMAN: Did I summarize pretty much?

18 MR. SULLIVAN: We could live with that.

19 CHAIRMAN: If you don't mind, may I ask
20 you to sit down and may I ask Mr. Meyer to come back
21 to the podium if he would

22 Mr. Myers, you heard obviously Mr.
23 Sullivan's comments. Obviously you made comments
24 yourself. Did I pretty much summarize obviously what
25 Mr. Sullivan was saying? Does that summarize pretty

1 much what you would - -

2 MR. MEYER: I agree wholeheartedly with
3 Nick and his comments. That this thing ought to be
4 driven by economic development and the economic
5 realities of the world. Not you people sitting up
6 there and legislating that somebody just put a couple
7 of hundred thousand dollars in a building that they
8 can't use it for a purpose, which is what Mr. Sullivan
9 and his partners did.

10 There's no driving demand for this or
11 demand force for this. It's something that came out
12 through Planning & Zoning. The people have access.
13 They're talking about they want to get a return on
14 their investment with regard to the downtown
15 development of the Riverpark. That's what the park
16 is. It's going to be four to six acres. They're
17 adding three more acres by putting in a river wall I
18 believe. There's other properties that are down there
19 that are available for all this development. What
20 this legislation does, Drew, is it commands that
21 everybody within this four block area do nothing but
22 what they have dreamed up in their offices.

23 CHAIRMAN: Mr. Meyer, I can assure you I
24 spent the time and did read.

25 MR. MEYER: And that's all they can do. A

1 lot of that stuff - - you know, they're talking about
2 a district. The park is across the street from all of
3 us or the river, one of the two. You're talking about
4 an area that's no more than 150 feet deep. All of the
5 things that they're talking about are already
6 available 150 more feet back. You've got the
7 restaurants, the Bistro. God knows we've put up with
8 Studio 101. Is that the bar's name? We come down
9 there on Monday morning and we pick up two cases full
10 of beer bottles out in our parking lot every Monday
11 morning from the weekend. We put up with a lot of
12 stuff down there. But to come in and just legislate
13 that the only thing you can use this ground floor for
14 is these things that they have come up on this list.
15 Probably the best development in downtown Owensboro,
16 absent the Riverpark Center, in the last ten years is
17 the bank right across the street. You couldn't put
18 the bank down there because it doesn't meet this use.
19 You'd have to come crawling in for a special use
20 permit before the board of adjustment to do exactly
21 that. That's what you were trying to tell Ron. Well,
22 suppose you're going to change professions in there.
23 You could probably - - Gary wants to say, you could
24 probably come in here and apply for those rights and
25 maybe we'll grant them and maybe we won't. We'd

1 rather not be interfered with like that. That's what
2 free ownership and free enterprise is all about.

3 CHAIRMAN: But my original statement was
4 and what I asked Mr. Sullivan in the summary, to stay
5 in your original zoning which you are right now, what
6 you've been zoned for - -

7 MR. MEYER: Grandfathered B-1.

8 CHAIRMAN: That's correct.

9 MR. MEYER: What's the question? Can I
10 live with that?

11 CHAIRMAN: Yes.

12 MR. MEYER: I've lived with that for 20
13 years.

14 CHAIRMAN: That's what I originally asked.
15 I know you wanted to make some other comments around
16 that.

17 MR. MEYER: Like I said I just think it's
18 an owner's intrusion that's really not necessary.
19 Economic realities are going to take care of
20 development down there and that's the way it will be.

21 CHAIRMAN: Okay. So is yes, the original
22 B-2 would suit you if that was allowed to - -

23 MR. MEYER: I just don't want to make a
24 commitment on that without thinking it all the way
25 through.

1 CHAIRMAN: That's what you've lived under
2 for 20 years.

3 MR. MEYER: I would say I've lived under
4 it for 20 years. Right at the moment I don't know why
5 it would hurt me.

6 CHAIRMAN: Thank you.

7 MR. CAMBRON: I make another comment here
8 also, Mr. Chairman. I think the limited liability
9 corporation that Mr. Sullivan was speaking about, they
10 put a lot of money in down there. I know the city is
11 going to be putting a lot of money down there. In
12 fact, I'm not sure. What's the exact cost of the
13 river wall and all that? Do you know, Gary?

14 MR. NOFFSINGER: No.

15 MR. CAMBRON: Seventeen million, something
16 like that. Where was the city trying to change
17 something when Mr. Sullivan put in all his money in
18 his building. I think that, again, the economics and
19 the cost of the property down there is going to drive
20 what needs to be down there. I'm not going to build a
21 body shop down there. That's for sure.

22 Again, I think that over time, again, that
23 property has been - - I don't know how long Dr.
24 Reader's lot has been sitting vacant for as long as I
25 can remember. Eventually something will come along

1 and will develop that. It maybe - - I have no idea,
2 but again it's going to be something substantial
3 because I'm sure you're not giving that property away
4 today, are you?

5 DR. READER: I think Keith said it best.
6 He said in the paper one day he said the problem is
7 that the dreamers don't have the money. People with
8 the money don't have the dreams.

9 I didn't know if you were going to ask me
10 up to discuss that. I think that - - I would like to
11 see something wonderful going down there, but
12 basically if you were to do something as you were just
13 discussing, to grandfather, you're basically rezoning
14 two properties. You're rezoning for our lot and the
15 lot between us and the law firm. You really spot
16 rezoning two pieces of property that are available for
17 development. The rest of the properties are at this
18 time have no building on them.

19 CHAIRMAN: I was going to ask you back to
20 the podium since you did make a comment. What I was
21 trying to do with Mr. Sullivan and Mr. Meyer to see
22 where they were at. Obviously they are very eligible
23 in presenting their case and we understand that. What
24 I was trying to get to is exactly where they would
25 like to be and what would be a situation that would be

1 compatible to them.

2 DR. READER: Maybe I could review some of
3 the proposals that have been discussed with us. One
4 was a project which was actually a subsidized housing
5 project that they were going to use tax credits to
6 renovate the buildings and also use back parking lot.
7 The other was a hotel. There's also been two other
8 developers come by with projects of residential.
9 There are properties in Florida and other places where
10 there are residential properties, condo units with
11 bistros or upscale dress shops or nice shops below
12 them, but they are subsidized by the developer so it
13 is an economic cost and also sometimes it might reduce
14 desirability of a project. If you have people that
15 have upscale condos, they may not want a pizza place
16 on the first floor below them where they would have
17 people coming into the building. You would have to
18 have separate elevators and separate - -

19 CHAIRMAN: How are your two lots listed?

20 DR. READER: B-2.

21 I think that the best use of that property
22 economically is to do a highrise type development. If
23 you do one or two floors or even three floors it's not
24 really economically feasible to do it. You have to go
25 higher to make it economically feasible per square

1 foot and land use.

2 CHAIRMAN: We could get into a whole new
3 conversation about how much the sand area there would
4 support and how high you could go.

5 DR. READER: Well, we have engineer
6 drawings for that. Fourteen stories.

7 CHAIRMAN: Skyscraper in Owensboro.

8 It looks like we've got somebody else from
9 the legal side that would like to make a comment.

10 MR. ELLIOTT: State your name, please.

11 MR. DEXTER: William Dexter.

12 (MR. WILLIAM DEXTER SWORN BY ATTORNEY.)

13 MR. DEXTER: My name is William Dexter.
14 I'm also a member of the 100 St. Ann Building, LLC and
15 one of Ron and Jesse's law partners. I just want to
16 make a couple of clarifications about or a possible
17 compromise that Mr. Kirkland has inquired about.

18 First of all I'd like to say that we and
19 many others support what the city is doing with the
20 river front. It's going to be a wonderful thing and
21 we're glad to be a part of it, but we're hearing that
22 the city wants to protect the investment that it's
23 going to make. We're here because we want to protect
24 the investment we have already made.

25 It's one thing to impose these new

1 restrictions on undeveloped vacant land so that a
2 developer can analyze whether they want to meet those
3 requirements and build with retail here and what else
4 is above it, economic that will work out. It's quite
5 another thing to impose that on buildings that were
6 built as an office building that were built 40 years
7 ago and recently renovated. So to say to them, we're
8 no longer going to allow you to use what it's been
9 used for 40 years or something similar to it.

10 I think two possible alternatives are that
11 you could impose this on undeveloped land or as Mr.
12 Kirkland has suggested, I think if you would restrict
13 or permit all uses that are permitted within the
14 existing zoning and not just what Mr. Noffsinger has
15 called our use category. I'm not even sure what that
16 is, but we all know what zone, what is permitted
17 within the existing zoning. So if this ordinance
18 would permit, would grandfather in whatever uses are
19 permitted within the existing zoning that might be a
20 compromise.

21 CHAIRMAN: Mr. Dexter, just a slight
22 correction. It was not actually a compromise that I
23 proposed. It was a question that I asked of Mr.
24 Sullivan. If that would be something that you all
25 would consider that would be fair and equitable. I

1 didn't actually propose it.

2 MR. DEXTER: I'm saying we're opposed to
3 the ordinance as it's written, but we want to be
4 reasonable. So if you're looking for ways to make
5 this reasonable, those two alternatives might be one
6 way to do that.

7 CHAIRMAN: Thank you.

8 Do we have any other comments or
9 suggestions?

10 MR. ELLIOTT: State your name, please.

11 MR. ALLEN: Tim Allen.

12 (MR. TIM ALLEN SWORN BY ATTORNEY.)

13 MR. ALLEN: I'm also a property owner on
14 Veterans Boulevard. To give you kind of a background.
15 At one point our property showed up as green space on
16 the development plan. So I bought another office in
17 order to ensure that I could continue my operation.
18 Of course, at some point plans changed and I'm no
19 longer green space and so I'm back and I've now
20 renovated my office. Now then come through - -

21 CHAIRMAN: Excuse me, Mr. Allen. Would
22 you mind stating what the nature of your business is
23 just for the record, please?

24 MR. ALLEN: I'm an energy consultant,
25 natural gas.

1 Ultimately if you come back and you try to
2 regulate the use of my property, I'm located in the
3 center of the block. As the ordinance states right
4 now, I couldn't have parking that enters off of
5 Veterans Boulevard. That's pretty restricted
6 considering that Owensboro Municipal Utility has
7 facilities on either side of me and I can't have
8 access. So ultimately my property is under the
9 regulation as it stands would be good only for the
10 purpose that I have right now, which is a single
11 office space right there. I have no opportunity
12 really to sell it to anybody because if I do sell it
13 to anybody, assuming they don't meet the requirement
14 of the business purpose, they're going to have to
15 develop it into something that has a bottom floor
16 retail shop that has no opportunity for parking and
17 that ultimately is not commercially viable. I
18 support, you know, what Tom was talking about and what
19 Nick was talking about. Economics are going to drive
20 this. If the purpose of this ordinance is to keep
21 tattoo parlors from the river, then pass the ordinance
22 that excludes tattoo parlors. Don't pass an ordinance
23 that tries to, I guess, encourage a business that has
24 very little opportunity to thrive commercially given
25 the cost of the land in that area and given the

1 traffic pattern in that area. At the expense of the
2 owners who have, like I said, invested in that
3 property. We purchased the property long before the
4 city talked about putting a river front development
5 project down there. We invested money in it long
6 before there was any effort to, as this states,
7 protect our property value. So ultimately if you just
8 let economics drive it and leave it zoned as it is
9 currently zoned. You know, we think that economics
10 will drive it. So when you put a \$20 million
11 investment across there, you're not going to have a
12 \$20 million front yard for us. Somebody is going to
13 come in there that has a better more viable business
14 purpose than say I have for that. They're going to
15 make it worth my while to leave and they'll develop
16 that in such a manner that it's economically viable
17 and also that it's something that is in consort with
18 what the city is trying to do down there. Ultimately,
19 you know, we just think that this is a regulation - -
20 it's kind of a solution looking for a problem. Right
21 now I think there's only, what, 10 or 11 property
22 owners in that area. To my knowledge those 10 or 11
23 property owners have never even gotten together in one
24 meeting to talk about what our plans are. To see what
25 we want to do to develop it. Is the city willing to

1 offer incentives to allow us to better that property
2 in consort again with what the city is trying to do on
3 the river front. I think everybody down there would
4 be willing to entertain that, but to come in and tell
5 us, hey, we've been thinking about it and here is what
6 we don't want you to do, and here is what we want you
7 to give up, here is how much we want you to subsidize
8 as far as a low revenue, low traffic retail to be on
9 the bottom floor of your investment is just not, you
10 know, it's not very feasible. We certainly don't
11 support this ordinance.

12 DR. BOTHWELL: Mr. Allen, where is your
13 business located?

14 MR. ALLEN: We're right across from
15 Veterans Memorial. Next to Tom.

16 DR. BOTHWELL: I'm sorry, where?

17 MR. ALLEN: Next to Tom Meyer.

18 Also, like I said to give you some
19 history, we showed up as green space. Weren't told
20 about it. We thought we better go talk to the city
21 because ultimately they were either going to take it
22 or attempt to buy it. We made contact with the city
23 and offered them that property. Ultimately we were
24 told that, hey, listen, that property is just not
25 worth that much money. We can't certainly buy that

1 property. Yet you can spend \$20 million over on the
2 other side to extend the riverbank and get green
3 space. It's kind of a position where again we hear a
4 lot about protecting the property owners interest;
5 except you don't want to protect the current property
6 owner's interest. What I want to know is kind of
7 where along that line you arbitrarily step in there
8 and say, hey, that guy that bought it just now, that's
9 the guy that we're trying to protect or that's the guy
10 that has the type of entity that we like.

11 CHAIRMAN: Mr. Allen, let me ask some of
12 the commission members for their comments if we have
13 no other comments from the public and see what kind of
14 comment.

15 Mr. Sullivan.

16 MR. SULLIVAN: The idea of grandfathering
17 folks to the current zoning seems to me to more
18 appropriately call for simply leaving the current
19 zoning.

20 CHAIRMAN: Correct.

21 MR. NOFFSINGER: Therefore you don't need
22 an ordinance.

23 CHAIRMAN: Maybe in our exchange, Mr.
24 Sullivan, maybe we used that word and shouldn't have.

25 DR. BOTHWELL: Mr. Kirkland, would you

1 like a pole?

2 CHAIRMAN: Let's hear from one outside the
3 legal profession and then we'll come back to you, Mr.
4 Meyer.

5 MR. ELLIOTT: State your name, please.

6 MR. CECIL: Tom Cecil. I'm operational
7 manager for City of Owensboro.

8 (MR. TOM CECIL SWORN BY ATTORNEY.)

9 MR. CECIL: We could differ on our
10 opinions of the benefits to overlay district, you
11 know, we could go back and forth all evening with
12 that. There's been a couple of things that's kind of
13 been misconceived here and I think misleading.

14 This overlay district was not something
15 that was contrived in the back office of the Planning
16 & Zoning. The real thrust of this came from multiple
17 public meetings on river front development attended by
18 hundreds of citizens. That this is what they told us
19 they wanted to see downtown. I respect your guys
20 opinions and you've got an investment downtown. It
21 was certainly never the intent to punish the property
22 owners downtown. Like I say we could differ on what
23 we think the benefits of this will be. Just one
24 clarification. This is not something that Planning &
25 Zoning created in the back doors.

1 Secondly, I think that Dr. Reader's
2 comments needs some clarification because I think
3 there was - - he left the impression there that
4 something underhanded had taken place with the intent
5 to buy his property.

6 Now, I did not actually see the letter
7 that was given to Dr. Reader, but I am aware that
8 there was an intent made to try to purchase this
9 property.

10 The city's intentions at that time is to
11 try to develop, to get some property down there that
12 we could encourage a private developer to come in and
13 develop. That was our plan. Somehow or another,
14 wherever the information got out, the city was
15 approached by an individual who was interested in
16 developing the property that would fall along the same
17 line of reasoning of what we want to happen there
18 anyway. So we thought it was a pretty sound logic
19 that if he was interested in doing what we wanted
20 ultimately done, that we would do the R&P's, we
21 encouraged him why don't you just contact Dr. Reader
22 and try to buy the property yourself, because
23 ultimately that was our goal anyway. We don't really
24 desire to own a lot of property downtown just for the
25 sake of owning the property. We'd rather build a tax

1 - - Dr. Reader might not have intended that, but I
2 think the impression here was like something
3 underhanded went on there. Nothing like that happened
4 at all.

5 We could differ on opinions of the value
6 overlay and that's going to be up for this body to
7 decide. If you want to look at this, maybe you want
8 to take an advisement on what you've got tonight and
9 see if we need to fine tune it.

10 CHAIRMAN: Mr. Cecil, let me ask you a
11 question. You've heard obviously Mr. Sullivan's
12 comments, Mr. Dexter's, and Mr. Meyer's, and Dr.
13 Reader's comments on their personal property downtown,
14 which they do own on the river front. Have owned.
15 Have paid taxes. Have improved. Have been owners for
16 20 plus years in their case. What is your opinion as
17 the city employee of their situation currently
18 downtown with the idea of the city's investment, it's
19 been stated in their front yard. How do you see that
20 picture?

21 MR. CECIL: Well, some of the statements
22 were made that they say it's going to be driven by
23 economics. It won't be a body shop that will develop
24 downtown, or a tattoo parlor can't afford to buy
25 property. But was already planned down there once

1 that was a very viable project that just didn't happen
2 was going to be a four-story condominium with all
3 ground floor parking for residents. Now, the
4 economics of that would have been worked out. It fell
5 through for other reason. One of the comments and
6 concern was we get all - - some of the economics are
7 driven for the simple fact there's not anything down
8 there now. Hopefully in 10 years, 15 years we go down
9 and there's a \$19 million investment down there. It
10 changes all that. It changes the viability. It
11 changes the first floor retail viability. Then the
12 whole block could be nothing but condos and we've
13 pretty much, the tax payer's money, we've created a
14 backyard for homeowners. That's been some of the
15 concerns. There's a lot of variables to this
16 obviously. Obviously we don't have all the answers.

17 CHAIRMAN: You understand, I'm sure you
18 do, if the Meyer group or the Sullivan group wanted to
19 put a highrise condo on their properties right now,
20 they are not zoned properly to do that. I mean they
21 can't do that.

22 MR. NOFFSINGER: They can.

23 CHAIRMAN: Oh, they can?

24 MR. NOFFSINGER: Under the current zone.

25 CHAIRMAN: Okay. And they could have the

1 lower level parking?

2 MR. NOFFSINGER: Yes.

3 MR. CECIL: Every future scenario they
4 might have for that building, I mean I can't come up
5 with an answer for everything that they might
6 conceivably think might happen if they sold the
7 property. I'm saying I'm just giving you assurance
8 the intent of this was never to go down there and
9 punish all the existing property owners.

10 CHAIRMAN: What would your situation be or
11 how would you feel if Mr. Sullivan said, we've got
12 plans to put a 14 story \$50 million condominium down
13 there with tax base of value of \$50 million on the
14 river?

15 MR. CECIL: You mean to tear down the
16 existing building or convert that building into a - -

17 CHAIRMAN: Convert, tear down, do whatever
18 he wants to do.

19 MR. CECIL: I think just from the input
20 that we've got from the general residents, that's not
21 something they would want to do unless it had some
22 kind of retail on the first floor.

23 MR. CAMBRON: Who are the general
24 residents down there?

25 MR. CECIL: From pretty much what the plan

1 was adopted. They want to create this critical mass
2 between the Riverpark and the Executive Inn that had
3 retail shops and restaurants and stuff for the
4 community to do that wasn't just all professional
5 shops and residential.

6 CHAIRMAN: Mr. Cambron, I think your
7 question, I think he's talking about the general
8 citizens of Owensboro. Your question was the
9 residents of downtown, I believe. Am I not correct?

10 MR. CAMBRON: Pretty much. I thought you
11 were alluding to some people downtown there in
12 particular.

13 MR. CECIL: I'm just going by the number
14 of public meetings that we have held to discuss river
15 front development.

16 CHAIRMAN: Does anybody else have any
17 questions of Mr. Cecil while we have him up there?

18 (NO RESPONSE)

19 CHAIRMAN: Does anybody else from the
20 audience have a comment?

21 MR. ELLIOTT: State your name, please.

22 MR. MEYER: J.D. Meyer.

23 (MR. J.D. MEYER SWORN BY ATTORNEY.)

24 MR. MEYER: Ladies and Gentlemen of the
25 Commission, I'm J.D. Meyer. I'm in practice with my

1 father Tom and also an owner in the property located
2 at 100 East Veterans Boulevard.

3 I concur with everything that was said by
4 Mr. Sullivan and Mr. Dexter and my father.

5 I want to take issue with something that
6 Mr. Cecil said about meetings with people about what
7 the community wants as far as in this development
8 area. I never heard or knew of any meetings that were
9 conducted for the purpose of discussing this
10 development plan. In fact, the first meeting and the
11 first time that I ever was exposed to the talk of the
12 Planning Commission with respect to what they were
13 intending to do here tonight in this ordinance was at
14 an informational meeting about the river front
15 development plan that they sent to all the members and
16 all the landowners of property on Veterans Boulevard
17 which was held at the Mexican restaurant on July 11th
18 of this year.

19 It was at that meeting where we went,
20 where we thought we were going to have everything
21 revealed to us as to what they were doing. But what
22 we were actually told at that meeting was they opened
23 the discussion about this is what we're going to do as
24 far as the regulations, which have now been presented
25 to the Commission tonight.

1 So I question where these public meetings
2 were held, how they were held, and how those comments
3 came in.

4 Now, the only other thing I want to speak
5 to, and I know we've belabored this point through and
6 through is public welfare. If your interest is
7 returning the investment to society and making sure
8 that this property is taken care of and making sure
9 that people use it, the current zoning classification
10 meets that requirement.

11 I bring people into my law office every
12 day. Had four people in this morning for a closing.
13 Had my children to play down at lunch in the park and
14 eat. And I had clients in this afternoon three to
15 four. Now, all of them take advantage of what they
16 see at that point in time. There are also
17 opportunities where I've seen them either before or
18 after my appointments walking on the river front.

19 Now, we made a comment before the meeting
20 that we bring people downtown from a business
21 standpoint as much as a restaurant, a bar, a soda
22 shop, or a children's clothing store.

23 Mr. Noffsinger made a comment outside
24 that, yes, you close at 5:00 and you go home. Well,
25 most of those other businesses will close at 5:00 and

1 go home as well.

2 It's together that we all create an
3 economic opportunity for downtown as we bring people
4 downtown as Mr. Sullivan alluded to. To eat lunch,
5 eat dinner and utilize these facilities.

6 In conclusion, I think the current zoning
7 classification and the economics in and of themselves
8 are going to alleviate any concerns that the community
9 has as to whether there are going to be tattoo parlors
10 or other business type situations down there. Thank
11 you.

12 CHAIRMAN: Thank you.

13 MR. CECIL: I want to answer a question.

14 There was over 30 public meetings that
15 were held over a three year period on river front
16 development. If you attended any of those, you saw it
17 covered a broad scope of things including the downtown
18 area at all those meetings, if you attended any of
19 them.

20 The meeting that you were invited to
21 personally was a culmination of all that information
22 to put it together in a plan. We called you guys down
23 there to get your thoughts on what the plan was going
24 to happen, have firsthand basis before we drafted it.
25 So that was a culmination of all these meetings.

1 CHAIRMAN: Thank you.

2 Would you like to make a few comments?

3 MR. ELLIOTT: State your name, please.

4 MR. PEACH: My name is Larry Peach.

5 (MR. LARRY PEACH SWORN BY ATTORNEY.)

6 MR. PEACH: Ladies and Gentleman, I want
7 to thank you for allowing us to be able to be here
8 this evening, but I am opposed to this.

9 Dr. Reader and myself have been downtown
10 for years. We have brought in clients from all over
11 the country like the gentleman over there. We take
12 pride in our downtown. We have unboarded windows and
13 doors downtown when the city was getting ready
14 probably to give up on downtown. Most of the banks
15 were getting ready to give up on downtown. That was
16 the comments we heard through bankers when we came
17 downtown originally. We've taken pride in downtown,
18 but I with my business partner am totally opposed to
19 our rights being being taken away with our land.
20 Thank you.

21 CHAIRMAN: Thank you, Mr. Peach.

22 Let me ask at this point in time for the
23 commission's input.

24 Mr. Appleby.

25 MR. APPLEBY: Well, in our discussions

1 that we've had to date about these amendments, more or
2 less I was under the impression that there's not been
3 a lot of opposition from existing property owners down
4 there. It looks to me that about half of them have
5 been here tonight and are opposed to it. At least at
6 this point, at the least of it I'd say we need to
7 postpone it and study it further, but if we're going
8 to take a vote on it tonight I don't think I could be
9 in favor of it.

10 CHAIRMAN: Mr. Jagoe.

11 MR. JAGOE: Probably the only other thing
12 that I would add to that it seems that not half of the
13 balance, or maybe half the balance of what's left over
14 is public property downtown. I would just agree with
15 David.

16 CHAIRMAN: Sister Vivian.

17 SISTER VIVIAN: I have been aware of the
18 meetings going on for the last three years and I've
19 heard a lot of input from various people in the
20 community. I read the editorial in the newspaper
21 recently. Like David, I think I was also under the
22 impression that this was for the good of everyone
23 including the property owners down by the river. I
24 was surprised at the extent of the opposition tonight
25 because I had not heard that. I wasn't prepared for

1 it. Probably my strongest instinct is that this needs
2 to go back to the table for further dialogue and make
3 sure that everyone understands what it is before we
4 take a vote on it. Right now I'm not sure how I would
5 vote.

6 CHAIRMAN: Thank you.

7 Mr. Noffsinger.

8 MR. NOFFSINGER: This is planning. I can
9 tell you not a lot has taken place in the way of
10 planning in the downtown area in many years. The City
11 of Owensboro and the community has embraced the
12 Owensboro Waterfront Master Plan. It's a great plan.
13 It's great for the community. The community will
14 prosper from it. It's going to take a significant
15 investment.

16 Tonight we sit here at a public meeting
17 which is very typical of many of our public meetings.
18 The property owners that feel a direct affect by this
19 ordinance are here tonight to oppose it. On the other
20 side you have the community that's not here tonight.
21 The community, when we talk about the public welfare
22 they're not represented here tonight. There were many
23 folks that supported this plan and supported the
24 creation of it, but they're not here tonight. The
25 ones directly affected financially now and in the

1 future are here to oppose it. It's disheartening.

2 The community seems to pull together one
3 by one and not as a community. When we try to plan
4 and we come up with a plan, there's very little
5 support.

6 We try to put this information out to the
7 public. Put the information out to the property
8 owners. The property owners had ample time to respond
9 to the ordinance. To make a difference in the
10 ordinance. To contact the Staff and recommend
11 potential changes to it.

12 I think it's a good ordinance. Sure, it
13 restricts the property owners rights. Zoning does
14 that. Each and every property owner in this community
15 their rights are affected by zoning. The rights will
16 change 5 years, 10 years, 20 years down the road.
17 Zoning is dynamic and the community is dynamic.
18 Unless this community takes a forward step to protect
19 the investment, the public's investment in that
20 waterfront, then the public stands to lose from that
21 huge investment. You say, you don't know that. No, I
22 don't know that for certain, but as a planner it's my
23 job to look at the community to see the big picture
24 and to be able to sort through and not get bogged down
25 by all the trees that stand in the way, the

1 obstacles. This is planning. Not everyone is going
2 to like it. There are going to be some that win.
3 There are going to be some that lose. You look to
4 find the best possible solution for the community.

5 I'm not saying this is a perfect ordinance
6 and I'm not saying every use in there is a use that
7 should not be permitted in the zone, but if we have a
8 condo development that comes in on the downtown
9 waterfront and we invested a tremendous amount of
10 money and it becomes a backyard for 60 people that
11 live in that condo, yes, I do have concerns about
12 that. I think the community should have concerns
13 about it. I think the community should participate in
14 this forum.

15 Obviously there are problems with this
16 ordinance. Problem number one, I stand out here or I
17 I sit here and look out across this room and I don't
18 find anyone here in support of it. That somewhat
19 surprises me, but again it's typical of the public
20 meetings within this community.

21 I wouldn't recommend the Planning
22 Commission vote on this tonight. I'd recommend that
23 you step back and take a look at it. We'll work with
24 the landowners in that area to try to come up with a
25 compromise, if one can be reached. Grandfathering the

1 existing zoning in would not be a solution. If you
2 were to grandfather the existing uses in, you might as
3 well not have an ordinance. Tomorrow is another
4 day. We'll plan for another day.

5 CHAIRMAN: Thank you, Mr. Noffsinger.
6 Mr. Cambron.

7 MR. CAMBRON: I have to echo what Mr.
8 Appleby and Mr. Jagoe said. Also I make a comment on
9 what Mr. Noffsinger said. I agree that maybe there
10 will be a condominium down there with 60 people and
11 that will end up being their backyard. Great. That
12 would be great because along with those 60 people will
13 come a restaurant, will come some retail, will come
14 something else, but you have to have that first jump
15 out there, and it may not be the best thing for
16 Veterans Boulevard. But I can tell you this: I've
17 been here 47 years. It looks a heck of a lot better
18 than it did when I was 15. There's a lot more things
19 that are going to happen down there in the future. No
20 question about it. Maybe at the expense of what the
21 city is going to put down there, the 20 million or
22 however much it is, but eventually that's going to
23 drive hopefully a condominium down there or a hotel or
24 something. Again, with that comes some retail, comes
25 some food, comes something that will complement what

1 goes downtown. It's not going to sit there vacant.
2 It's not going to happen. Time is the biggest thing
3 we have right now. The money is going to come
4 around. It will come around. Somebody will buy this
5 vacant lot down there or do something, but again, we
6 have to take a giant leap. I don't think, again,
7 restricting these people to this particular overlay is
8 the correct way to do it at this point in time.
9 Regardless if we meet again or whatever. I just don't
10 think it's the right thing. I think the zoning pretty
11 well takes care of what's going to happen down there,
12 and it has. We have to tweak it from time to time,
13 but we sure don't have to reinvent the wheel. That's
14 my comment.

15 CHAIRMAN: Thank you, Mr. Cambron.

16 Ms. Dixon.

17 MS. DIXON: I think it's a good plan. I
18 think the Staff is to be commended, but I think the
19 communication is broken down somewhere. If the key
20 players aren't actively participating in it and
21 comfortable with it, it won't fly anyway. I think
22 it's going to have to go back to the drawing table.

23 CHAIRMAN: Dr. Bothwell.

24 DR. BOTHWELL: I'm totally opposed to the
25 idea. I think property rights are something that

1 should be respected. I'm really upset city made an
2 effort to buy it and then backed out. My thought is
3 if you want to control it, buy it. Own it. I don't
4 know what transpired in that deal, but it didn't sound
5 very good to me. No, I would not support it at all.

6 MR. BURKE: I'm of the general public.
7 I'm Richard Burke.

8 (MR. RICHARD BURKE SWORN BY ATTORNEY.)

9 MR. BURKE: I'm the general public and I
10 own a little property. I'm very partial to a person's
11 rights on property. The testimony I've heard here
12 this evening I think I'm glad you all have taken the
13 vote you have because I think that people, these
14 owners here of this property, I still feel like their
15 opinion should come first. From the general public I
16 understand that part too. Anyhow I want to go on the
17 record for the general public I'm opposed to the way
18 it stands too. It needs to like you say go back to
19 the drawing board.

20 CHAIRMAN: Thank you, sir. Just for
21 clarification we have not taken a vote yet.

22 MR. BURKE: Well, I thought you were here.

23 CHAIRMAN: Eventually we will, but we have
24 not. I was just clarifying for the record that we
25 have not at this point taken a vote.

1 MR. BURKE: I'm opposed. I'm sorry.

2 CHAIRMAN: No problem. I just wanted to
3 clarify that.

4 MR. BURKE: I'm just here the general
5 public. You said they weren't represented so I'm the
6 general public.

7 CHAIRMAN: I was not going to leave myself
8 out of this mix since I put each and every one of the
9 commissioners on the spot and our director.

10 The situation where if we did have a
11 highrise or any kind of development at X number of
12 dollars, Dr. Reader, and the Meyers, and the Sullivans
13 and their two groups, selling their property, this
14 property would be bought at a substantial investment
15 to the next purchaser. Whatever they put up would be
16 properties that would bring in tax dollars to all the
17 citizens of Owensboro. The city owning property
18 downtown takes, as Mr. Cecil says, takes property off
19 the tax rolls. It's not as if somebody builds a 50 or
20 \$100 million highrise down there and sells luxury
21 condos and the city is left out. The city would not
22 be left out because each one of us, people that are
23 property owners we get to contribute each year to the
24 welfare of the City of Owensboro. It's there. So
25 that is not something where this side would win

1 dramatically and the tax payers of Daviess County and
2 Owensboro would lose dramatically because that
3 would not happen. Those are situations that I think
4 we sort are overshadowed by the emotions of what could
5 happen to each individual instance. These people that
6 now are property owners currently are paying taxes and
7 are paying taxes on the appraised value of their
8 buildings to the City of Owensboro for the opportunity
9 to participate in the downtown area and pay for their
10 goods and services. So it's not as if all of these
11 people that own properties are going to get off scott
12 free and they're getting a free ride on the tax payers
13 of Owensboro. So with that I think with no further
14 comments I think the Chair is ready for - -

15 Dr. Reader, very brief comment.

16 DR. READER: Very brief.

17 One other option would be for the city to
18 purchase the vacant property. Use it for green space
19 and develop the space on Second Street into retail.
20 Existing buildings with probably a hundred and some
21 thousand square feet which could make a very nice
22 retail. You could have a farmer's market on a parking
23 lot. You could have retail shops in the existing
24 buildings, go on the second floor, third floor. It
25 might be an option for the city to get immediate

1 economic boost to offer some options or very low cost
2 interest loans to property owners on Second Street to
3 develop their property into retail and develop a small
4 retail district in that area.

5 CHAIRMAN: Thank you, Dr. Reader. That is
6 not something we can do at this commission meeting.
7 Those are ideas for the city commission and Mr. Cecil
8 probably.

9 MR. CAMBRON: Chair ready for a motion?

10 CHAIRMAN: Chair is ready for a motion,
11 Mr. Cambron.

12 MR. CAMBRON: Mr. Chairman, I make a
13 motion that we do not accept the overlay of the
14 central district provisions as they stand at this
15 point in time.

16 DR. BOTHWELL: Second.

17 CHAIRMAN: We've got a motion for denial
18 by Mr. Cambron. We've got a second by Dr. Bothwell.
19 All in favor of that motion - -

20 MR. APPLEBY: Motion for denial or
21 postpone?

22 MR. CAMBRON: Denial.

23 DR. BOTHWELL: Denial.

24 CHAIRMAN: Did you have a comment?

25 MR. JAGOE: Does this go without a

1 recommendation to the city commission? What's the
2 process?

3 CHAIRMAN: Mr. Elliott, could you comment
4 on the motion regardless of the impact? Can you
5 remove yourself from that and comment?

6 MR. ELLIOTT: I should remove myself
7 because I just have too much of a conflict.

8 CHAIRMAN: Now, wait a minute now. I'm
9 not asking your comment on any specific. I'm asking
10 your comment on Mr. Cambron's motion and Dr.
11 Bothwell's second on the technicality of these
12 motions. Nothing to do with - -

13 MS. DIXON: If we deny it goes straight to
14 the commission anyway.

15 MR. ELLIOTT: If it goes to denial, yes.
16 Recommendation is denial, it goes to the city
17 commission.

18 CHAIRMAN: Wouldn't a postponement bring
19 it back?

20 MR. ELLIOTT: Brings it back here.

21 MR. CAMBRON: A postponement is all good
22 and fine. Somebody is going to rework this thing
23 regardless if we deny it or postpone.

24 MR. ELLIOTT: I know, but it goes to
25 legislative body on denial.

1 MR. CAMBRON: I understand. My motion is
2 to deny.

3 CHAIRMAN: Mr. Cambron, would you like to
4 -

5 MR. JAGOE: I wasn't trying to get into
6 restate.

7 MR. APPLEBY: I just want to be clear. I
8 wasn't trying to get him to restate it either.

9 DR. BOTHWELL: I second his motion

10 CHAIRMAN: We've got a motion for denial
11 by Mr. Cambron. We've got a second by Dr. Bothwell.
12 All in favor raise your right hand.

13 Would you like to make a comment?

14 MR. NOFFSINGER: I wish you would
15 reconsider that because - -

16 DR. BOTHWELL: Mr. Chairman, we have a
17 second and a motion and you called for the vote.

18 CHAIRMAN: You're absolutely correct.
19 We're ready for the vote.

20 All in favor of the motion for denial
21 raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion is denied unanimously.

24 Next item.

25 -----

1 ZONING CHANGE - CITY

2 ITEM 3

3 409, 411 East Second Street
4 Consider zoning change: From I-2 Heavy Industrial to
5 B-2 Central Business
Applicant: Terry Woodward

6 MR. ELLIOTT: State your name, please.

7 MR. HOWARD: Brian Howard.

8 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

9 PLANNING STAFF RECOMMENDATIONS

10 Staff recommends approval because the
11 proposal is in compliance with the community's adopted
12 Comprehensive Plan. The condition and findings of
13 fact that support this recommendation include the
14 following:

15 Condition: No direct vehicular access
16 to East Second Street shall be permitted.

17 Findings of Fact:

18 1. The subject property is located in a
19 Central Business Plan area where Central Business uses
20 are appropriate in general locations; and

21 2. The existing building and lot patterns
22 meet the criteria for non-residential development.

23 We'd like to enter the Staff Report as
24 Exhibit A.

25 CHAIRMAN: Is there anybody representing

Ohio Valley Reporting
(270) 683-7383

1 the applicant?

2 MS. THOMAS: Sandra Thomas with Rusher
3 Construction.

4 (MS. SANDRA THOMAS SWORN BY ATTORNEY.)

5 MS. THOMAS: I'm prepared to answer any
6 questions that you might have.

7 CHAIRMAN: Does anybody have any questions
8 of the applicant?

9 (NO RESPONSE)

10 CHAIRMAN: Does anybody from the
11 commission have any questions of the applicant?

12 (NO RESPONSE)

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

15 MS. DIXON: Move to approve based upon
16 Planning Staff Recommendations subject to the
17 condition of no direct vehicular access to East Second
18 Street shall be permitted and based upon Findings of
19 Fact 1 and 2.

20 CHAIRMAN: We've got a motion for approval
21 by Ms. Dixon.

22 MR. APPLEBY: Second.

23 CHAIRMAN: We've got a second by Mr.
24 Appleby. All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 ITEM 4

4 1016 East 6th Street, 521 Hathaway Street, Portion of
5 525 and 529 Hathaway Street, portion of 518, 522 and
6 526 Breckenridge Street

7 Consider zoning change: From B-4 General Business to
8 I-1 Light Industrial

9 Applicant: James Gregory Wimsatt

10 MR. NOFFSINGER: Mr. Chairman, the

11 applicant has asked that this item be postponed until

12 the October meeting of the Planning Commission.

13 You'll need to vote on that item.

14 CHAIRMAN: Do we have a motion on this?

15 MR. APPLEBY: Motion to postpone.

16 CHAIRMAN: Motion to postpone by Mr.

17 Appleby.

18 MR. JAGOE: Second.

19 CHAIRMAN: Second by Mr. Jagoe. All in

20 favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 RELATED ITEM

25 ITEM 4A

506 Breckenridge Street

Consider approval of final development plan

Applicant: James Gregory Wimsatt

1 MR. NOFFSINGER: Mr. Chairman, the
2 applicant has requested that this item be postponed
3 until the October meeting.

4 MR. CAMBRON: Make a motion for
5 postponement.

6 CHAIRMAN: Motion to postpone by Mr.
7 Cambron.

8 MS. DIXON: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 5

15 817, 827 West Ninth Street
16 Consider zoning change: From B-4 General Business to
17 I-1 Light Industrial
Applicant: Image Builders, J.C. & Maxine Head

18 PLANNING STAFF RECOMMENDATIONS

19 Staff recommends approval because the
20 proposal is in compliance with the community's adopted
21 Comprehensive Plan. The conditions and findings of
22 fact that support this recommendation include the
23 following:

24 Conditions:

25 1. Improve/repair existing sidewalks that

1 currently serve the site;

2 2. The access point on West Ninth Street
3 shall be shared access point with the adjacent
4 property at 807 West Ninth Street; and,

5 3. Truck traffic serving the subject
6 property shall maneuver on-site.

7 Findings of Fact:

8 1. The subject property is located in a
9 Business Plan Area, where light industrial uses are
10 appropriate in limited locations;

11 2. The subject property will be
12 non-residential in use; and,

13 3. The subject is a logical expansion of
14 an existing I-1 Light Industrial zone that will not
15 significantly increase the amount of I-1 Light
16 Industrial zoning within the area and will not
17 overburden the capacity of roadways or other necessary
18 urban services.

19 We would like to enter the Staff Report as
20 Exhibit B.

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

23 APPLICANT REP: Yes.

24 CHAIRMAN: Does anybody have any questions
25 of the applicant from the audience or for the

1 commission?

2 MR. ELLIOTT: State your name, please.

3 MR. CONDON: David Condon.

4 (MR. CONDON SWORN BY ATTORNEY.)

5 MR. CONDON: Ladies and Gentleman of the
6 Commission, I'm David Condon. I'm the director of the
7 Housing Authority of Owensboro.

8 I have reviewed the proposal very briefly
9 yesterday and looked at the site plan diagrams. I
10 have had a brief conversation with Mr. Hayden
11 yesterday afternoon regarding some concerns. I
12 discussed this with some of my board members. My
13 board members have expressed concerns with this
14 rezoning and I'm here tonight to express those
15 concerns to the commission.

16 The Housing Authority owns or operates 52
17 units. We are about 100 feet away from the site. In
18 addition to our properties there are numerous
19 properties along West Eighth Street from Poplar over
20 to Walnut, along Poplar down from Eighth to Seventh
21 and down to Fifth Street that has been redeveloped by
22 the city with residential units. The general
23 character of the area has been redeveloped and
24 revitalized as a residential area.

25 The Housing Authority about four or five

1 years ago spent approximately \$500,000 in redoing the
2 exterior of the site. So significant changes have
3 occurred in this area, revitalize the residential
4 character of the neighborhood.

5 As I understand the zoning of the subject
6 property as it now stands that it's B-4 and it's not
7 an I-11 use. I don't quite understand the Staff's
8 recommendation or finding that the expansion of the
9 use of I-1 would be a logical expansion as I heard the
10 recommendation to be. I don't quite understand it if
11 that's the case. It seems to be rezoning from
12 existing B-4 to I-1.

13 As I said I have discussed it with Mr.
14 Hayden. I had questions of him. He was very
15 cooperative in answering those. He was going to
16 contact with the company in Nashville that will be
17 delivering to this site every day. He was going to
18 contact them yesterday, but as of this afternoon he
19 hadn't called me back. So perhaps he was unable to
20 contact them.

21 What this proposed use is is a bakery
22 distribution center with a small - - the plan shows a
23 small retail outlet facing on Ninth Street. The
24 restrictions that the Staff has recommended is that
25 the primary vehicular use of the property access via

1 off of Poplar Street where the truck that comes in
2 from Nashville every morning at 3 or 4:00 in the
3 morning turn in either off of Ninth Street or comes up
4 Poplar from Fifth Street or Fourth Street and turns
5 into a lot and does whatever maneuvering it has to do
6 to get into the loading dock which involves some
7 backing up.

8 So we're now creating a significant
9 increase of traffic with a semi truck or a vehicle 42
10 to 45 feet in length on a very small street, Poplar
11 Street, where it is required to back up and create all
12 sorts of noise at 3 or 4:00 in the morning. Then to
13 unload at that time of morning, the various other
14 delivery vehicles will deliver whatever the product is
15 and to whatever number of locations.

16 We think this proposal is inappropriate
17 for the area. We believe the statutes, as I
18 understand the statutes and as I understand the
19 comprehensive plan, it would not be permitted.

20 As I understand the statute, if we allow a
21 zone change only in the event of a proposed unchanged
22 conformance is in conformance with the comprehensive
23 plan. My reading of the plan indicates that it would
24 require a logical extension on the site and the same
25 sort of use that already exist of the plan area. Now,

1 the significant uses in this area, as I have mentioned
2 already, are essentially residential. The subject lot
3 is presently a vacant lot, but all the other areas in
4 there are residential. On the west side of Poplar
5 Street you have the city park. On the north, on the
6 corner there, at the corner of Eighth and Poplar you
7 have a funeral home, but everything else going all the
8 way over to Walnut is residential. Over to Fifth,
9 Seventh and Fifth Street is now a redeveloped
10 residential area. This is all part of the Baptist
11 town redevelopment area.

12 What we're going to now - - what you're
13 being asked to do is put in light industrial use in
14 this vacant lot. The residential character of the
15 area extends all the way down West Ninth to almost all
16 the way to Locust, and then across Locust almost to
17 Frederica. So there's a huge - - on the north side of
18 West Ninth Street. Things presume residential on the
19 south side of West Ninth, but when we get to this area
20 from Walnut and let's say the city park that is zoned
21 I-1, but it's across Ninth Street. Some of those lots
22 are vacant. A lot of those aren't being used for
23 anything. So we think that this would not be in
24 conformance with the comprehensive plan.

25 We see no specified criteria that would

1 make this zoning change appropriate on this subject
2 property.

3 The statute also allows you to rezone in
4 case the original classification is improper. There's
5 been no showing that the original classification was
6 improper. As far as the analysis of that, as I
7 understand it, as to look at how the zones are set up
8 and that one looks at the intensity of use of the
9 subject property and adjacent properties and to buffer
10 those from high density to lower density by creating
11 intermedia between them. Residential uses are defined
12 as low density.

13 Light industrial is identified as higher
14 intensity use and has a level of 12. That's six steps
15 in-between. What we're proposing to do here is put a
16 level 12 intensity adjacent to a level 6 intensity. I
17 think that would be inappropriate.

18 There will be inappropriate as minimal
19 buffering between these two uses and these two areas
20 and that would be improper.

21 The plan also indicates - - and due
22 consideration should be given to the concerns of the
23 residents in the area and that the land use proposal
24 is inappropriate. We feel this change is probably
25 inappropriate.

1 The statute also allows you to rezone
2 substantial change in the area. The only change in
3 this area that I can tell over time has been the
4 extension of redeveloping the residential property.
5 The subject property, which I understand is B-4, has
6 been B-4, and everything else in that area has been
7 expanded, modernized, the city has ownership programs.
8 There are single-family properties. We have our
9 residential units that we have spent significant sums
10 of money on. So the only change here in the
11 rehabilitation and enhancement of residential on
12 another area and not a change into commercial.

13 The property across the street on the
14 south side is vacant or seems to be in disuse. It's
15 not a big demand here for light industrial property or
16 use. So we think there's no substantial change.

17 CHAIRMAN: You obviously have some
18 questions and we do have some people that are
19 representing the other side. Why don't we before they
20 get too far behind on their questions, why don't we
21 bring them to the podium and let them clear up some of
22 your concerns. Will that be acceptable?

23 MR. CONDON: That's fine. Whatever the
24 commission wants. That's fine.

25 CHAIRMAN: Let me ask you to just sit down

1 a moment and we will wait for the return of Mr.
2 Cambron and Dr. Bothwell.

3 MR. HAYDEN: My name is Randy Howard.

4 CHAIRMAN: Randy, hold on just a moment,
5 please. We will have to suspend our testimony for
6 just a moment. Two of our members are not at the
7 chair at the moment.

8 MR. ELLIOTT: Let me go ahead and swear
9 him in.

10 (MR. RANDY HAYDEN SWORN BY ATTORNEY.)

11 - - - - (OFF THE RECORD) - - - -

12 CHAIRMAN: You may proceed, Mr. Hayden.

13 MR. HAYDEN: The property we're looking
14 at, what we've tried to do here with this is it's
15 minimal impact on the neighborhood.

16 In realty what you have is basically one
17 tractor-trailer type truck coming in per day. Yes, it
18 comes in early in the morning. The route that it's
19 going to be taking it will come in off of Parrish
20 Avenue. It will turn left onto Crabtree, down to West
21 Ninth Street. The block before on Maple it will take
22 one block turn down Eighth Street and on to Poplar
23 Street. So it won't be coming through from Fourth
24 Street all the way through the residential. As you
25 look down Ninth Street, the whole purpose of that

1 development and the redevelopment of Ninth Street was
2 for business purposes. Although there are some
3 residential uses as you drive up and down Ninth
4 Street, there's a number of business type uses.

5 In realty, what we're talking about in
6 terms of the zoning, and you want to talk about
7 traffic and you want to talk about conjunction. A
8 typical B-4 general business usage would typically
9 generate more business traffic than what this site is
10 intended to generate with the light industrial.

11 The Flower's Baking Company in addition to
12 that I think it's a bold move in their making a move
13 into the Owensboro market place.

14 A lot of people don't know who Flower's
15 Baking is. There are 8,000 employees. Thirty-two
16 bakeries around the United States. Fortune 500
17 Company. What they're going to create in this site,
18 which is right in line with what the whole purpose of
19 West Ninth Street improvement was is to create jobs.
20 What we're looking at is probably 14 to 20 jobs that
21 will be created. It's not environmentally polluting.
22 If you look at that site as it was used before, it was
23 a feed mill. So it is a better usage than what it
24 was.

25 They will have a retail store there which

1 will generate bread and pastries for some even the
2 neighbors that Mr. Condon was talking about. It will
3 be a minimal impact on the neighborhood as we see it.

4 I do have one of the representatives of
5 Flower's Baking here tonight. He'll be more than
6 happy to address the commission and answer any
7 questions.

8 At this point, are there any questions for
9 me?

10 MR. APPLEBY: I have one question for Mr.
11 Noffsinger.

12 I think one of the questions he had or he
13 questioned how the staff recommended approval, didn't
14 feel it was in compliance with the comprehensive plan.
15 I think that maybe you can clarify that for him, Gary.
16 It is contiguous with light industrial zoning in the
17 area.

18 MR. NOFFSINGER: Yes, sir. The Staff
19 recommended approval based upon logical zoning
20 expansion. You do have light industrial zoning across
21 Ninth Street. Ms. Stone prepared that recommendation.

22 MS. STONE: Actually Mr. Howard did.

23 The current zoning is non-residential in
24 nature. It is located in a business plan area,
25 non-essential residential plan area. Many of the

1 properties that he was referring to are in central
2 residential plan areas, but this property located on
3 the corner of Ninth and Poplar is in a business plan
4 area across from the business industrial plan area.
5 There is industrial zoning across the street. So our
6 recommendation is based on an expansion that is not
7 significant in size and the industry zoning that
8 already exist along Ninth Street.

9 CHAIRMAN: Any other comments? Do you
10 have any further comments you'd like to make?

11 MR. HAYDEN: No.

12 CHAIRMAN: Mr. Noffsinger.

13 MR. NOFFSINGER: I just have one
14 observation. Looking at the site plan, Mr. Hayden, I
15 see that you're not proposing any screening along the
16 public alley. Right across that public alley appears
17 to be where the adjoining residential uses are
18 located. Would you be willing to install a minimum 6
19 foot high stockade fence and a tree every 40 feet to
20 be used as a sound buffer and visual buffer along that
21 north property line that adjoins the alley?

22 MR. HAYDEN: The alley is not actually
23 physically an alley. It's shown on the plat, but it's
24 never been developed. It's just grass. I don't know
25 if that - -

1 MR. NOFFSINGER: Would you be willing to
2 install a 6 foot high continuous element; meaning say
3 a stockade privacy fence with one tree per 40 feet
4 along that boundary to provide as a sound barrier and
5 visual barrier?

6 MR. HAYDEN: I'm thinking here in terms of
7 what that would entail.

8 MR. CAMBRON: Have you ever thought about
9 closing that alley?

10 MR. HAYDEN: That's a possibility sure. I
11 mean there are other properties that adjoin that alley
12 though. I'm not sure if that's something that we can
13 address at this meeting or not.

14 MR. CAMBRON: It doesn't look like that
15 alley has been used for much.

16 MR. HAYDEN: It's never been used. It's
17 never been used. It's just been dedicated there as
18 best we can tell.

19 Mr. Noffsinger, I'm happy to put a fence
20 in, do what screening needs to be done. We've got to
21 do some pretty extensive landscaping with this project
22 anyway. It's going to be a very appealing building.
23 It's a 4,000 square foot building. We're not talking
24 about a 30,000 square foot warehouse. We want it to
25 look nice. Flower's Baking wants to be a good

1 neighbor to the community. This is their first step
2 in the door. Their intentions are good.

3 MR. CAMBRON: So he agrees. So when we
4 make a motion we need to include that?

5 MR. NOFFSINGER: As a condition a minimum
6 6 foot high privacy fence with one tree per 40 feet.

7 MR. CAMBRON: Are you ready for a motion?

8 CHAIRMAN: Wait just a moment, Mr.
9 Cambron.

10 Would you like to make a final comment.

11 MR. CONDON: I appreciate the comments
12 from Mr. Hayden and what he said today is very much
13 what he indicated from yesterday.

14 The concern here is with the zone change
15 adjacent to a residential area. Not necessarily what
16 his client or Flower's Baking is wanting to do. That
17 opens it up to anyone in the future. The adjacent
18 lots that remains to the east of this property over to
19 Walnut can be rezoned light industrial. Those uses
20 include major and minor automobile and truck repair.
21 Once this lot is rezoned to light industrial, those
22 uses are committed. Then if Flower's Baking leaves or
23 if they sell, that zoning stays. A significantly more
24 detrimental use can come in. That's why we have to
25 object to this rezoning at this time. We can have

1 major and minor automobile and truck repairs come in
2 essentially a residential area. We could have truck
3 terminals. We could have an ice plant. We could have
4 light manufacturing. Once the change happens, then
5 anyone who is a successor and title for the persons
6 who buy the lot next-door to this, as I believe it's
7 going to be subdivided in half, this lot, and can
8 subdivide it and have far more impact on the area.
9 It's directly adjacent to a residential property on
10 Eighth Street. The rest of the area on the north side
11 of West Ninth is residential at this time. We think
12 it's inappropriate.

13 I won't discuss the Staff's restriction on
14 writing. I do note some concern that the truck is now
15 going to come down West Eighth Street, which is
16 residential all the way on both sides, parking on both
17 sides, at 3 or 4 in the morning. So that's another
18 concern. Same concern as if it came from Fifth
19 Street. Those are our objections. I understand that
20 they want to be a good neighbor. They very well may
21 be. I think there are problems in the future with
22 reclassification of the property.

23 CHAIRMAN: Appreciate your comment. You
24 can be assured that this commission is very much aware
25 of those situations and the commission considers each

1 and every zoning change, the balance of the community,
2 and the neighbors, and the surrounding areas, and the
3 applicant.

4 If there are no further - - yes, sir, you
5 have one further comment?

6 MR. ELLIOTT: State your name, please.

7 MR. HOWARD: My name is John Howard.

8 (MR. JOHN HOWARD SWORN BY ATTORNEY.)

9 MR. HOWARD: This is an area that's
10 hurting for economic development. There's some good
11 things that are happening down there.

12 Just east of this property the old tobacco
13 warehouse has been tore down. That property is
14 vacant. It's ready for development. On the corner of
15 Ninth and Poplar is a substandard building that's been
16 sitting there vacant for years. If this project goes
17 forward, that corner is going to be cleaned up. It's
18 going to get rid of an eyesore. This is going to be a
19 nice business that will be appreciated by that
20 neighborhood.

21 I own the property east of this lot. I've
22 had a business that's near in that neighborhood.
23 Right now been told to me if this goes through they're
24 going to be very interested in putting this business
25 over on this lot east of this property. As you go

1 east from this property all way to Walnut Street,
2 that's all commercial. There's no residential in
3 there.

4 This will be I think a catalyst that will
5 initiate some real good economic development in that
6 area, in an area that sorely needs development. I
7 think it would be a catalyst that will vastly improve
8 this whole area. Thank you.

9 CHAIRMAN: Are there any further comments
10 from the audience, from the commission?

11 (NO RESPONSE)

12 CHAIRMAN: Chair is ready for a motion.

13 MR. CAMBRON: Mr. Chairman, I make a
14 motion for approval based upon Conditions 1 through 3
15 and the Findings of Fact 1, 2 and 3, with an amendment
16 to that. Also adding the owner installs a six foot
17 continuous stockade fence on the back side which is
18 the north side - -

19 Am I correct, Gary?

20 MR. NOFFSINGER: Yes, sir.

21 MR. CAMBRON: - - of the property with six
22 foot trees every 40 foot.

23 On which side of the fence, Mr.
24 Noffsinger? On the inside or the outside?

25 MR. NOFFSINGER: You make that decision.

1 MR. CAMBRON: Six foot fence, six foot
2 trees. Also I hope the Flower company ends up
3 employing 14 people from that place over there to help
4 those people. That's my recommendation, Mr. Chairman.

5 CHAIRMAN: Mr. Cambron has made a
6 recommendation for approval.

7 DR. BOTHWELL: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 ITEM 6

14 116, 118 East 18th Street
15 Consider zoning change: From R-4DT Inner-City
16 Residential to P-1 Professional/Service
Applicant: Darrell R. Chambers, Jr. & Marnell E.
Chambers

17 MR. NOFFSINGER: Item 6 has been
18 withdrawn.

19 (SISTER VIVIAN BOWLES LEAVE PLANNING
20 COMMISSION MEETING AT THIS TIME.)

21 -----

22 ZONING CHANGE - COUNTY

23 ITEM 7

24 1411, 1431 Chandler Avenue, 6300 Waterfield Drive
25 Consider zoning change: From R-3MF Multi-Family
Residential to R-1C Single Family Residential
Applicant: Wright's Acres, LLC
Ohio Valley Reporting
(270) 683-7383

1 PLANNING STAFF RECOMMENDATIONS

2 Staff recommends approval because the
3 proposal is in compliance with the community's adopted
4 Comprehensive Plan. The conditions and findings of
5 fact that support this recommendation include the
6 following:

7 Conditions:

8 1. Provide an additional 5' of
9 right-of-way along the KY 405 property frontage; and,

10 2. No direct access to KY 405. Access
11 shall be limited to Chandler Avenue.

12 Findings of Fact:

13 1. The subject property is located in a
14 Future Urban Plan Area, where urban low-density
15 residential uses are appropriate in very-limited
16 locations;

17 2. The building lot pattern will be urban
18 residential development;

19 3. All urban services, including sanitary
20 sewer, already exist on-site; and,

21 4. The applicant's request is an
22 expansion of existing urban low-density residential
23 use onto contiguous land.

24 We would like to enter the Staff Report as
25 Exhibit C.

1 CHAIRMAN: Is there anybody here
2 representing the applicant?

3 APPLICANT REP: Yes.

4 CHAIRMAN: Is there any questions of the
5 applicant from the audience?

6 (NO RESPONSE)

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

9 DR. BOTHWELL: Motion for approval, Mr.
10 Chairman, based on Conditions 1 and 2 and Findings of
11 Fact 1, 2, 3 and 4.

12 CHAIRMAN: We have a motion for approval
13 by Dr. Bothwell.

14 MR. APPLEBY: Second.

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 Next item.

20 RELATED ITEM:

21 ITEM 7A

22 Wright's Acres, LLC
23 Consider approval of major subdivision preliminary
24 plat
25 Applicant: Wright's Acres, LLC

25 MR. NOFFSINGER: Mr. Chairman, this Plat

1 has been reviewed by the Planning Staff and
2 Engineering Staff. It's found to be in order. It's
3 found to meet the minimum requirements of the locally
4 adopted regulations and is ready for consideration.

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

7 APPLICANT REP: Yes.

8 CHAIRMAN: Do we have any questions of the
9 applicant?

10 (NO RESPONSE)

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

13 MR. APPLEBY: Motion for approval.

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

16 MR. CAMBRON: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item.

22 -----

23 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISION

24 ITEM 8

25 Shadewood Terrace

1 Consider approval of revised major subdivision
2 preliminary plat/final development plan
3 Applicant: Image Builders

4 MR. NOFFSINGER: Mr. Chairman, this plat
5 has been reviewed by the Planning Staff and
6 Engineering Staff. It's found to be in order. It's
7 found to meet minimum requirements of the locally
8 adopted regulations and is consistent with the
9 comprehensive plan and is ready for your
10 consideration.

11 CHAIRMAN: Is anybody here representing
12 the applicant?

13 APPLICANT REP: Yes.

14 CHAIRMAN: Does anybody have any questions
15 of the applicant?

16 (NO RESPONSE)

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

19 MR. APPLEBY: Motion for approval.

20 CHAIRMAN: Motion for approval by Mr.
21 Appleby.

22 MS. DIXON: Second.

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

25 (ALL MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item.

2 -----

3 DEVELOPMENT PLANS

4 ITEM 9

5 5240 Frederica Street, POSTPONED from August 12, 2004
meeting

6 Consider approval of amended final development plan
Applicant: SITE, Inc.: Katherine Burns (John Burns)

7

8 MR. NOFFSINGER: Mr. Chairman, this
9 development plan has been reviewed by the Planning
10 Staff and Engineering Staff. It's found to meet the
11 minimum requirements of the locally adopted
12 regulations and is consistent with the zoning and
13 Comprehensive Plan and is recommended for your
14 consideration.

15 CHAIRMAN: Is anybody here representing
16 the applicant?

17 MS. HENRY: Yes.

18 MR. ELLIOTT: State your name, please.

19 MS. HENRY: Kim Henry.

20 (MS. KIM HENRY SWORN BY ATTORNEY.)

21 MS. HENRY: I'm with Sites, Incorporated,
22 the civil engineering firm that prepared the
23 development plan. Can answer any questions you might
24 have.

25 CHAIRMAN: Thank you very much.

1 Does anybody have any questions of the
2 applicant?

3 (NO RESPONSE)

4 CHAIRMAN: If nobody does, the chair is
5 ready for a motion.

6 MR. JAGOE: Motion to approve.

7 CHAIRMAN: Motion for approval by Mr.
8 Jagoe.

9 MR. CAMBRON: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 -----

16 MINOR SUBDIVISIONS

17 ITEM 10

18 506 Breckenridge Street, 525, 529 Hathaway Street
19 Consider approval of minor subdivision plat
Applicant: James Gregory Wimsatt, Dorothy Harley

20 MR. NOFFSINGER: Mr. Chairman, the
21 applicant has asked that this item be postponed until
22 the October meeting. You need to vote on that.

23 CHAIRMAN: Do we have a motion?

24 MS. DIXON: Move to postpone.

25 CHAIRMAN: Motion for postponement by Ms.

1 Dixon.

2 MR. CAMBRON: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item.

8 ITEM 11

9 12334 Red Hill-Maxwell Road
Consider approval of minor subdivision plat
10 Applicant: Patty Barnett, April Huchason

11 CHAIRMAN: Is anybody here representing
12 the applicant?

13 (NO RESPONSE)

14 CHAIRMAN: If not does anybody have any
15 questions?

16 (NO RESPONSE)

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

19 DR. BOTHWELL: Motion for approval.

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

22 MR. CAMBRON: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item.

3 ITEM 12

4 2247, 2255 Wilson Lane
5 Consider approval of minor subdivision plat
6 Applicant: Ryann L. & Kimberly M. Welborn

7 MR. NOFFSINGER: Mr. Chairman, the
8 Planning Staff has reviewed this application. It
9 comes to you as a plat that I cannot sign. Ms. Stone
10 can describe the particulars regarding this plat.

11 MS. STONE: The property is zoned R1-A.
12 There was three lots involved plus a consolidation to
13 an adjacent property. The three lots are being
14 consolidated with 50 feet of frontage which is less
15 than R1-A requirement for lot frontage, but they are
16 creating a situation where two lots that don't have
17 any frontage would be attached to that lot. So
18 they're reducing the number of lots by three,
19 consolidating a portion to the adjacent property so
20 that there's one lot with lot frontage. So we think
21 it's creating a better situation and would recommend
22 approval.

23 CHAIRMAN: Ms. Stone, it's safe to say
24 that we're improving a situation that we had
25 previously?

MS. STONE: Yes. We're eliminating two

1 lots that had no road frontage at all and attaching
2 them to a lot with less than the required amount of
3 road frontage.

4 CHAIRMAN: Thank you.

5 Is anybody representing the applicant?

6 (NO RESPONSE)

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

9 (NO RESPONSE)

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

12 MR. JAGOE: Move to approve.

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

15 MS. DIXON: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item.

21 ITEM 13

22 11601 US 431
23 Consider approval of minor subdivision plat
24 Applicant: Federal Home Loan Mortgage Corp., Scott
25 Richmond

25 MR. NOFFSINGER: Mr. Chairman, this plat

 Ohio Valley Reporting
 (270) 683-7383

1 comes before the Planning Commission because it
2 creates a lot that is undersized.

3 It does not meet the one acre minimum lot
4 size requirement and the request is made to allow this
5 lot to be created and it be a non-buildable lot.
6 There's a notation on the plat that no building
7 permits can be issued on this 0.776 acre tract that's
8 being created because in fact it is undersized.

9 The applicant, Federal Home Mortgage, is
10 asking that this property division be approved because
11 they have a mortgage on 11601 US 431, but not on this
12 adjoining 0.776 acre area. The 0.776 acres was
13 consolidated from the adjoining tract to the south and
14 made a part of the 1.605 acre tract; however, it's my
15 understanding that the property owners are in default
16 and the bank will be foreclosing on the property and
17 they cannot foreclose on a piece of property, which is
18 the 0.776 acre tract, that they do not have a mortgage
19 on.

20 So the applicant is asking that the
21 division line that you see here be put in place and
22 they're asking that you sign off on the plat.

23 There is one complication with this plat
24 in that the current property owners have not signed
25 the plat. I'll let Mr. Elliott address that issue.

1 MR. ELLIOTT: I would recommend that we
2 not consider with the property owner not signing off
3 on the plat. We're going to create restrictions on
4 this lot that's going to affect the property owner. I
5 think that we need their signature on this plat before
6 it's approved and we don't have that.

7 MR. CAMBRON: Do we need to postpone?

8 MR. BOTHWELL: Why don't we make a motion
9 to deny and let them resubmit.

10 MR. ELLIOTT: You may want to postpone.
11 Scott Richmond was going to be here and address it. I
12 don't think he's here.

13 MR. CAMBRON: I think we should postpone.

14 MR. ELLIOTT: The property owners may sign
15 off on the plat. I don't know.

16 MS. STONE: The property owners of the
17 .776 plat have indicated through the surveyor or the
18 information we got from the surveyor was that they
19 would not sign on the plat. So that's argument. As
20 part of our mark up, we ask that they sign the plat
21 and Mr. Simmons, who is the surveyor, communicated
22 with the bank and apparently they have not been
23 willing to sign the plat.

24 DR. BOTHWELL: Can we postpone without the
25 applicant asking us to postpone?

1 MR. APPLEBY: I make a motion to deny.

2 DR. BOTHWELL: I second.

3 CHAIRMAN: Wait. Do you want your
4 question clarified?

5 MR. ELLIOTT: I think it may clear up if
6 we postpone it. Here's the foreclosure action. There
7 may be a situation where the applicant can go to court
8 and have the owners sign this plat. We need their
9 signature on it. I guess the answer to your first
10 question is you can postpone it without permission
11 from the applicant.

12 CHAIRMAN: So Dr. Bothwell you have a
13 motion for postponement?

14 DR. BOTHWELL: No. We've got another
15 motion. A motion for denial and I second it.

16 MR. APPLEBY: I move to deny it and bring
17 it back.

18 DR. BOTHWELL: And I second it.

19 CHAIRMAN: Motion for denial by Mr.
20 Appleby. Second by Dr. Bothwell. We have a motion
21 and a second. All in favor for denial raise your
22 right hand.

23 MR. ELLIOTT: Let's put a finding with
24 that as far as the property owners have not signed the
25 plat.

1 DR. BOTHWELL: Yes.

2 CHAIRMAN: Wait a minute. That needs to
3 be read into your motion, Mr. Appleby.

4 MR. APPLEBY: I make a motion for denial
5 as the property owners have not signed the plat.

6 CHAIRMAN: We're restating the motion.

7 DR. BOTHWELL: Second.

8 CHAIRMAN: And we're restating the second
9 under the conditions stated by Mr. Appleby. All in
10 favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion for denial passes
13 unanimously.

14 We're ready for one final motion.

15 MS. DIXON: Move to adjourn.

16 CHAIRMAN: Motion for adjournment by Ms.
17 Dixon.

18 DR. BOTHWELL: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: We are adjourned.

23 -----

24

25

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

19 _____
20 LYNNETTE KOLLER, NOTARY PUBLIC
21 OHIO VALLEY REPORTING SERVICE
22 202 WEST THIRD STREET, SUITE 12
23 OWENSBORO, KENTUCKY 42303

COUNTY OF RESIDENCE:
24 DAVIESS COUNTY, KENTUCKY

Ohio Valley Reporting
(270) 683-7383