The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, September 9, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

CHAIRMAN:  I would like to welcome everybody to our September 9th Owensboro Metropolitan Planning and Zoning Commission meeting.

Our invocation tonight will be given by Dr. Mark Bothwell.  Please stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Our first order of business will be our minutes from our last meeting.  Are there any corrections, questions?

(NO RESPONSE)
CHAIRMAN: If not the chair is ready for a motion.

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

CHAIRMAN: Motion for approval by Mr. Cambron.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.

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PUBLIC HEARING

ITEM 2

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

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

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

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

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

The Planning Staff looked at ways to go about protecting these districts and protecting the property owners investments and to make sure that
whatever is done would be in compliance with our adopted comprehensive plan and other plans that have been prepared for this area.

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

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. STONE SWORN BY ATTORNEY.)

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

The goals and objectives of the community's Comprehensive Plan and the downtown plan suggest that land uses along Veterans Boulevard should focus on business and cultural uses, promote waterfront development and enhance recreation and tourism. Residential uses are identified as desirable in the vicinity of downtown, but not so as to conflict with river front festive events.
The plan physical improvements that the City of Owensboro is beginning to implement with the Riverpark patio expansion and construction of the west plaza portion of the plan need to be augmented by recreational programing and a development strategy for this area in order for the river front plan to be successfully implemented.

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

This area is zoned B-2 Central Business District. Typically that district allows a wide variety of residential professional and business uses. Generally the Veterans Boulevard overlay district that we are proposing restricts the uses on the ground floor areas along in this general area and allows residential and professional office uses to be located above the ground floor over another permitted use. Permitted uses generally in this area are uses that would enhance that active area downtown and they would include restaurants, entertainment and specialty retail uses.
That's generally what's been proposed in the plan. If there's any questions, I would be glad to try to answer them.

CHAIRMAN: Do we have any questions from the audience?

DR. READER: Yes.

MR. ELLIOTT: State your name, please.

DR. READER: Scott Reader.

(DR. READER SWORN BY ATTORNEY.)

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

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

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

MS. STONE: The uses that are currently in that area would become non-conforming with the adoption of the new ordinance and those uses could continue; however, development of a new project would require adherence to the regulations.
DR. READER: If you put up a new building it would be - -

MS. STONE: Yes.

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

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

DR. READER: Thank you.

CHAIRMAN: Thank you, Ms. Stone.

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

(MR. TOM MEYER SWORN BY ATTORNEY.)

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

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

We spent a lot of money developing our

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

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

There certainly is, and this commission
should take recognition of this fact, the city already
owns one piece of property down there that if they
wanted to make available to a developer to develop
these type they could do so. They brought the
property right across the street from the Riverpark Center that used to be Ed Bell's office building. There are other properties that are down there for sale. The free market ought to really be what drives this thing. Not any legislative purpose where you have to put this type of facility on the first floor.

We were told tonight in questions before the meeting, we were asking the Staff, we have a parking lot that we own that's right next to our building there and if we chose to expand our law office into that space by doubling the size of the building, we'd no longer have the right to do that without putting a restaurant or T-shirt shop or something else open to the public on the first floor.

I think all of you all can recognize that the economics of putting that type of a shop in that space is self-defeating, if you will. We would have to go and get special exceptions in order to develop the property that we have just like Dr. Reader asked even though we're already using that as a professional service building. So we think that if anything ought to drive this it ought to be the free market system and the economic development.

We don't believe when we were asked to go to a meeting and luncheon they were talking to us
about, well, this will really help your neighborhood
because it will keep tattoo parlors from coming in
there and pawn shops and things of that type. Our
response to that was the mere economic realities of
the situation on what property cost on Veterans
Boulevard is going to keep those type of undesirable
locations out of there anyway because you can't come
in and buy a piece of property from Dr. Reader and put
a tattoo parlor in there. It just doesn't work.

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

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

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

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

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

We don't think that -- if this thing was
really something that was driven by economic
development, you would see it down there happening
already. But if you stop and think and work your way
down the street, there is none of that right now that
is taking place, but if the opportunity or if somebody
wants to do that, there's a piece of property right
next to Ron Sullivan and Jesse Mountjoy's building
that's for sale. I think the property where Dr.
Reader referred to across the street from us between
us and the America Legion has been up for sale a
number of times and probably can still be bought. The
city already owns a third of our block as it is
anyway. The opportunities are there for that kind of
development. We think that the fair market system
ought to develop that as economic realities persist
and not just to legislate that this has to be the way
it is and the only way that it is.

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

CHAIRMAN: Thank you, Mr. Meyer.

Anybody else that has a comment?

Dr. Reader, would you like to return?

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

We have had this property for several
years. We've tried to develop as much as we could
within our limited budgets. We've had several
interested parties over the past few years to develop projects and for whatever reasons they fell apart.

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

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

The city was also offered some of the other buildings. The county has been offered the building, but then again we were told that there -- we had a letter obtained from the city that they would not honor it any more because of the private developer's interest. So now in a situation where the
city has offered to buy the property, gave us a letter of intent, then backed out because of the private developer and now they're trying to restrict what the private builder might do. I think that's inappropriate and interferes with our property rights. We've been down there for several years. We came down there before a lot of people were interested in trying to do retail down there. I don't think it's fair to penalize us and take away some of the value of our property because of this.

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

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

There's been a lot of conflict in what the city wants to do and doesn't want to do. I think it's
inappropriate at this time for them to restrict uses.

   Basically this is aimed at two properties.

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

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

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

CHAIRMAN: Dr. Reader, a question of you. You said that the city had signed a letter of intent with you all to possibly purchase your property, right?
DR. READER: They did offer a price of intent and we were doing some final minor negotiations and then the city -- we didn't hear that. I called and talked to Mr. Payne as to why they had backed off. He said this wasn't of their utmost priority to buy this piece of property. He said, well, we don't have money now. Then we found out through other people that they had backed off because of private development and they are interested parties within the city government who have interested parties outside the city government who would benefit from --

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

DR. READER: That's correct.

CHAIRMAN: Did a private entity approach you?

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

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

DR. READER: Not by these particular people, no. City officials have relatives who are involved in this. City people.
CHAIRMAN: That's really nothing.

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

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

DR. READER: And a letter of intent.

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

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

CHAIRMAN: Have they made an offer to you?

DR. READER: No.

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

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

CHAIRMAN: So it would fit within the proposed zone?

DR. READER: Well, not necessarily if the
first floor wasn't -- if the first floor were
residential it would not.

CHAIRMAN: I thought you said restaurant.

DR. READER: This was also involving
existing buildings.

CHAIRMAN: Does anybody else have any
comments?

Are you finished, Dr. Reader?

DR. READER: Yes.

CHAIRMAN: Does anybody else have any
comment?

MR. ELLIOTT: State your name, please.

MR. SULLIVAN: Ron Sullivan.

(MR. RON SULLIVAN SWORN BY ATTORNEY.)

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

A few years ago we decided to make what we
consider a very substantial investment in Owensboro
and in our area by improving our building, by
renovating our building that had been built in '64 and
then gone into tremendous disrepair both internally
and externally. We have now completed that renovation
and we're very proud of what we have both being
tenants there and as an asset to the community and in
improving the neighborhood.

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

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

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

If this ordinance is passed, it will in
affect diminish the value of our property as well as
the other properties on that street. To the extent of
the diminution of value in our property is less than
the diminution of the value of the property such as
Dr. Reader's that is not developed yet and would only
be able to be developed under the new program.

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

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

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

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

CHAIRMAN: Excuse me, Mr. Sullivan. I'm
going to get an echo. I can't hear. Thank you. I think
that will do.

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

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

MR. SULLIVAN: One that doesn't take away
the rights that we have on our building. That is the
right we have in our building is to use it for the
current classifications for the B-2 Central Business
district. If you diminish those rights by imposing on
us an obligation where we have to change the first
floor into a retail outfit, then --

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

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

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

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

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

MR. NOFFSINGER: I might because I'm
certainly not the draftsman, but I was the one giving
the opinion.

I do believe I instigated that
correction over lunch one day with one of your
partners in hoping to describe the ordinance and we
had that discussion. I wanted to give a very strict
interpretation because I didn't want to leave you with
an impression, your partner with an impression that
you could do something that you couldn't. I said,
however, we need to sit down and go over this very
issue. Then I talked with another one of your
partners yesterday and said, we would be glad to sit
down with you and talk with you about it. I did. I
gave an example of if an attorney's office were to
change, leave there and you had an accountant's
office, that likely would not be a change that the
staff could approve; however, you could go to the
board of adjustment on an administrative appeal from
one non-conforming use to another. After researching
and talking with our attorney, I realize this was a
correction that happened yesterday afternoon. After
talking with our attorney, I came to you and gave you
the interpretation after consulting with legal
counsel. I don't think the ordinance leaves much
confusion. I think it's very straightforward and
clear cut in outlining the specific uses that would be allowed.

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

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

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

That's what we're talking about here

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

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

Obviously there are three areas that we address in zoning to make it constitution; the public health, the public safety and the public welfare. We hear a lot about it's all about children. Well, here it's all about the public. It's about the public welfare and the public's investment into this area.

This ordinance is created to protect the public's investment and the public's interest. Hopefully this won't become a backyard, waterfront development backyard for a few people. That the public will actually benefit from the investment that they're pouring into the waterfront development. The ordinance is crafted to increase we feel property values. It's consistent with the comprehensive Plan. It's consistent with the Owensboro Master Plan,
Downtown Owensboro Action Plan and Downtown Design Guideline. These guidelines are not something that the Planning Staff came up with with the City of Owensboro staff and just a select few people. We've been discussing these for many months. In fact, Pride had an informational gathering meeting, public meeting and took public comments. That's where this came from. From meetings, public meetings and not just out of the blue. I know you understand that. I do feel very strongly about it in terms of protecting the public's interest and the public welfare. I also respect your rights as a landowner. We've tried to craft an ordinance here, an amendment that would protect the public's interest and also respect your rights to continue your current use and to market your property in the future.

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

CHAIRMAN: Dr. Bothwell.

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

MR. SULLIVAN: No, because we'd like to be able to sell it if a bank wants. We'd like to be
able to sell it if a hotel wants it. We'd like to be
able to sell it if an insurance company wants it. We
don't feel that -- we still don't support the matter.

Did I respond to your --

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

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

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

Now, a professional office, if it's an
accounting office, if it's an insurance office, it
fits into that same use category then it's permitted
by right. A hotel I believe would be allowed by this
ordinance because with a hotel you're likely to have a
lobby, restaurant facilities and whatnot on the first
floor and then your actual rooms would be on the
higher floors. It does limit that use, but there are
many uses that are similar in nature to the current
use that would be allowed without going to the board
of adjustment.
I'd just ask if legal counsel concurred with that?

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

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

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

DR. BOTHWELL: Mr. Sullivan, now that you've heard that maybe some other uses would be permitted, you know, uses of your building, does that
change your opinion again?

MR. SULLIVAN: No, it does not. No matter how you tweak it, it still constitutes a restriction on the use of the property. It's the government coming in and saying, we're going to subsidize this type of enterprise on that lower level by placing the weight of it on the backs of the people that own that property at this time. Of course, zoning is legal, but when zoning gets to the point where, and I didn't say get -- when zoning gets to the point where it renders the use of your property economically not feasible, when it destroys the economic feasibility of your owning that property that you own over there because you can't sell it for the use with the investment that you have in it, the money you have in it, then you've gotten to the point where you may be in what we call reverse condemnation where the city is action is in affect taking of their property and they seek a reverse condemnation and they say, okay, you take the property because you've done that. Now pay us for it. There are such provisions that can arise, according to the United States Supreme Court. Whether it's arisen in this instance -- we know zoning is valid. We also know that zonings are taken. You've got one side public rights and you've got the other
side our personal individual property rights. Here I think the proposed program so infringes on property rights of the property owners in that neighborhood as to make from a legislative — you're in a legislative communal now. You're sitting here not as judges but as legislators as to whether you want to adopt a law. As legislators you need to consider the property rights that you are infringing on with this legislation.

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

MR. SULLIVAN: That's about the size.

CHAIRMAN: Did I summarize pretty much?

MR. SULLIVAN: We could live with that.

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

Mr. Myers, you heard obviously Mr. Sullivan's comments. Obviously you made comments yourself. Did I pretty much summarize obviously what Mr. Sullivan was saying? Does that summarize pretty
MR. MEYER: I agree wholeheartedly with Nick and his comments. That this thing ought to be driven by economic development and the economic realities of the world. Not you people sitting up there and legislating that somebody just put a couple of hundred thousand dollars in a building that they can't use it for a purpose, which is what Mr. Sullivan and his partners did.

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

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

MR. MEYER: And that's all they can do. A
lot of that stuff -- you know, they're talking about a district. The park is across the street from all of us or the river, one of the two. You're talking about an area that's no more than 150 feet deep. All of the things that they're talking about are already available 150 more feet back. You've got the restaurants, the Bistro. God knows we've put up with Studio 101. Is that the bar's name? We come down there on Monday morning and we pick up two cases full of beer bottles out in our parking lot every Monday morning from the weekend. We put up with a lot of stuff down there. But to come in and just legislate that the only thing you can use this ground floor for is these things that they have come up on this list. Probably the best development in downtown Owensboro, absent the Riverpark Center, in the last ten years is the bank right across the street. You couldn't put the bank down there because it doesn't meet this use. You'd have to come crawling in for a special use permit before the board of adjustment to do exactly that. That's what you were trying to tell Ron. Well, suppose you're going to change professions in there. You could probably -- Gary wants to say, you could probably come in here and apply for those rights and maybe we'll grant them and maybe we won't. We'd
rather not be interfered with like that. That's what free ownership and free enterprise is all about.

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

MR. MEYER: Grandfathered B-1.

CHAIRMAN: That's correct.

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

CHAIRMAN: Yes.

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

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

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

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

MR. MEYER: I just don't want to make a commitment on that without thinking it all the way through.
CHAIRMAN: That's what you've lived under for 20 years.

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

CHAIRMAN: Thank you.

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

MR. NOFFSINGER: No.

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

Again, I think that over time, again, that property has been -- I don't know how long Dr. Reader's lot has been sitting vacant for as long as I can remember. Eventually something will come along
and will develop that. It maybe -- I have no idea, but again it's going to be something substantial because I'm sure you're not giving that property away today, are you?

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

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

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

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

CHAIRMAN: How are your two lots listed?

DR. READER: B-2.

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

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

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

CHAIRMAN: Skyscraper in Owensboro.

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

MR. ELLIOTT: State your name, please.

MR. DEXTER: William Dexter.

(MR. WILLIAM DEXTER SWORN BY ATTORNEY.)

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

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

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

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

CHAIRMAN: Mr. Dexter, just a slight
correction. It was not actually a compromise that I
proposed. It was a question that I asked of Mr.
Sullivan. If that would be something that you all
would consider that would be fair and equitable. I
didn't actually propose it.

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

CHAIRMAN: Thank you.

Do we have any other comments or
suggestions?

MR. ELLIOTT: State your name, please.

MR. ALLEN: Tim Allen.

(MR. TIM ALLEN SWORN BY ATTORNEY.)

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

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

MR. ALLEN: I'm an energy consultant,
natural gas.
Ultimately if you come back and you try to regulate the use of my property, I'm located in the center of the block. As the ordinance states right now, I couldn't have parking that enters off of Veterans Boulevard. That's pretty restricted considering that Owensboro Municipal Utility has facilities on either side of me and I can't have access. So ultimately my property is under the regulation as it stands would be good only for the purpose that I have right now, which is a single office space right there. I have no opportunity really to sell it to anybody because if I do sell it to anybody, assuming they don't meet the requirement of the business purpose, they're going to have to develop it into something that has a bottom floor retail shop that has no opportunity for parking and that ultimately is not commercially viable. I support, you know, what Tom was talking about and what Nick was talking about. Economics are going to drive this. If the purpose of this ordinance is to keep tattoo parlors from the river, then pass the ordinance that excludes tattoo parlors. Don't pass an ordinance that tries to, I guess, encourage a business that has very little opportunity to thrive commercially given the cost of the land in that area and given the
traffic pattern in that area. At the expense of the owners who have, like I said, invested in that property. We purchased the property long before the city talked about putting a river front development project down there. We invested money in it long before there was any effort to, as this states, protect our property value. So ultimately if you just let economics drive it and leave it zoned as it is currently zoned. You know, we think that economics will drive it. So when you put a $20 million investment across there, you're not going to have a $20 million front yard for us. Somebody is going to come in there that has a better more viable business purpose than say I have for that. They're going to make it worth my while to leave and they'll develop that in such a manner that it's economically viable and also that it's something that is in consort with what the city is trying to do down there. Ultimately, you know, we just think that this is a regulation -- it's kind of a solution looking for a problem. Right now I think there's only, what, 10 or 11 property owners in that area. To my knowledge those 10 or 11 property owners have never even gotten together in one meeting to talk about what our plans are. To see what we want to do to develop it. Is the city willing to
offer incentives to allow us to better that property in consort again with what the city is trying to do on the river front. I think everybody down there would be willing to entertain that, but to come in and tell us, hey, we've been thinking about it and here is what we don't want you to do, and here is what we want you to give up, here is how much we want you to subsidize as far as a low revenue, low traffic retail to be on the bottom floor of your investment is just not, you know, it's not very feasible. We certainly don't support this ordinance.

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

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

   DR. BOTHWELL:  I'm sorry, where?

   MR. ALLEN:  Next to Tom Meyer.

   Also, like I said to give you some history, we showed up as green space. Weren't told about it. We thought we better go talk to the city because ultimately they were either going to take it or attempt to buy it. We made contact with the city and offered them that property. Ultimately we were told that, hey, listen, that property is just not worth that much money. We can't certainly buy that
property. Yet you can spend $20 million over on the
other side to extend the riverbank and get green
space. It's kind of a position where again we hear a
lot about protecting the property owners interest;
except you don't want to protect the current property
owner's interest. What I want to know is kind of
where along that line you arbitrarily step in there
and say, hey, that guy that bought it just now, that's
the guy that we're trying to protect or that's the guy
that has the type of entity that we like.

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

Mr. Sullivan.

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

CHAIRMAN: Correct.

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

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

DR. BOTHWELL: Mr. Kirkland, would you
like a pole?

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

MR. ELLIOTT: State your name, please.

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

(MR. TOM CECIL SWORN BY ATTORNEY.)

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

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

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

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

The city's intentions at that time is to try to develop, to get some property down there that we could encourage a private developer to come in and develop. That was our plan. Somehow or another, wherever the information got out, the city was approached by an individual who was interested in developing the property that would fall along the same line of reasoning of what we want to happen there anyway. So we thought it was a pretty sound logic that if he was interested in doing what we wanted ultimately done, that we would do the R&P's, we encouraged him why don't you just contact Dr. Reader and try to buy the property yourself, because ultimately that was our goal anyway. We don't really desire to own a lot of property downtown just for the sake of owning the property. We'd rather build a tax...
Dr. Reader might not have intended that, but I think the impression here was like something underhanded went on there. Nothing like that happened at all.

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

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

MR. CECIL: Well, some of the statements were made that they say it's going to be driven by economics. It won't be a body shop that will develop downtown, or a tattoo parlor can't afford to buy property. But was already planned down there once
that was a very viable project that just didn't happen
was going to be a four-story condominium with all
ground floor parking for residents. Now, the
economics of that would have been worked out. It fell
through for other reason. One of the comments and
concern was we get all -- some of the economics are
driven for the simple fact there's not anything down
there now. Hopefully in 10 years, 15 years we go down
and there's a $19 million investment down there. It
changes all that. It changes the viability. It
changes the first floor retail viability. Then the
whole block could be nothing but condos and we've
pretty much, the tax payer's money, we've created a
backyard for homeowners. That's been some of the
concerns. There's a lot of variables to this
obviously. Obviously we don't have all the answers.
CHAIRMAN: You understand, I'm sure you
do, if the Meyer group or the Sullivan group wanted to
put a highrise condo on their properties right now,
they are not zoned properly to do that. I mean they
can't do that.

MR. NOFFSINGER: They can.
CHAIRMAN: Oh, they can?
MR. NOFFSINGER: Under the current zone.
CHAIRMAN: Okay. And they could have the
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lower level parking?

    MR. NOFFSINGER: Yes.

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

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

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

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

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

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

    MR. CECIL: From pretty much what the plan
was adopted. They want to create this critical mass between the Riverpark and the Executive Inn that had retail shops and restaurants and stuff for the community to do that wasn't just all professional shops and residential.

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

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

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

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

(NO RESPONSE)

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

MR. ELLIOTT: State your name, please.

MR. MEYER: J.D. Meyer.

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

MR. MEYER: Ladies and Gentlemen of the Commission, I'm J.D. Meyer. I'm in practice with my Ohio Valley Reporting (270) 683-7383
father Tom and also an owner in the property located at 100 East Veterans Boulevard.

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

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

It was at that meeting where we went, where we thought we were going to have everything revealed to us as to what they were doing. But what we were actually told at that meeting was they opened the discussion about this is what we're going to do as far as the regulations, which have now been presented to the Commission tonight.
So I question where these public meetings were held, how they were held, and how those comments came in.

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

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

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

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

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

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

CHAIRMAN: Thank you.

MR. CECIL: I want to answer a question.

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

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

Would you like to make a few comments?

MR. ELLIOTT: State your name, please.

MR. PEACH: My name is Larry Peach.

(MR. LARRY PEACH SWORN BY ATTORNEY.)

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

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

Thank you.

CHAIRMAN: Thank you, Mr. Peach.

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

Mr. Appleby.

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

CHAIRMAN: Mr. Jagoe.

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

CHAIRMAN: Sister Vivian.

SISTER VIVIAN: I have been aware of the
meetings going on for the last three years and I've
heard a lot of input from various people in the
community. I read the editorial in the newspaper
recently. Like David, I think I was also under the
impression that this was for the good of everyone
including the property owners down by the river. I
was surprised at the extent of the opposition tonight
because I had not heard that. I wasn't prepared for
it. Probably my strongest instinct is that this needs
to go back to the table for further dialogue and make
sure that everyone understands what it is before we
take a vote on it. Right now I'm not sure how I would
vote.

Chairman: Thank you.

Mr. Noffsinger.

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

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

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

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

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

I think it's a good ordinance. Sure, it restricts the property owners rights. Zoning does that. Each and every property owner in this community their rights are affected by zoning. The rights will change 5 years, 10 years, 20 years down the road. Zoning is dynamic and the community is dynamic. Unless this community takes a forward step to protect the investment, the public's investment in that waterfront, then the public stands to lose from that huge investment. You say, you don't know that. No, I don't know that for certain, but as a planner it's my job to look at the community to see the big picture and to be able to sort through and not get bogged down by all the trees that stand in the way, the
obstacles. This is planning. Not everyone is going
to like it. There are going to be some that win.
There are going to be some that lose. You look to
find the best possible solution for the community.

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

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

I wouldn't recommend the Planning
Commission vote on this tonight. I'd recommend that
you step back and take a look at it. We'll work with
the landowners in that area to try to come up with a
compromise, if one can be reached. Grandfathering the
existing zoning in would not be a solution. If you
were to grandfather the existing uses in, you might as
well not have an ordinance. Tomorrow is another
day. We'll plan for another day.

CHAIRMAN: Thank you, Mr. Noffsinger.

Mr. Cambron.

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

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

CHAIRMAN: Thank you, Mr. Cambron.

Ms. Dixon.

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

CHAIRMAN: Dr. Bothwell.

DR. BOTHWELL: I'm totally opposed to the idea. I think property rights are something that
should be respected. I'm really upset city made an
effort to buy it and then backed out. My thought is
if you want to control it, buy it. Own it. I don't
know what transpired in that deal, but it didn't sound
very good to me. No, I would not support it at all.

MR. BURKE: I'm of the general public.

I'm Richard Burke.

(MR. RICHARD BURKE SWORN BY ATTORNEY.)

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

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

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

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

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

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

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

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

The situation where if we did have a highrise or any kind of development at X number of dollars, Dr. Reader, and the Meyers, and the Sullivans and their two groups, selling their property, this property would be bought at a substantial investment to the next purchaser. Whatever they put up would be properties that would bring in tax dollars to all the citizens of Owensboro. The city owning property downtown takes, as Mr. Cecil says, takes property off the tax rolls. It's not as if somebody builds a 50 or $100 million highrise down there and sells luxury condos and the city is left out. The city would not be left out because each one of us, people that are property owners we get to contribute each year to the welfare of the City of Owensboro. It's there. So that is not something where this side would win.
dramatically and the tax payers of Daviess County and
Owensboro would lose dramatically because that
would not happen. Those are situations that I think
we sort are overshadowed by the emotions of what could
happen to each individual instance. These people that
now are property owners currently are paying taxes and
are paying taxes on the appraised value of their
buildings to the City of Owensboro for the opportunity
to participate in the downtown area and pay for their
goods and services. So it's not as if all of these
people that own properties are going to get off scott
free and they're getting a free ride on the tax payers
of Owensboro. So with that I think with no further
comments I think the Chair is ready for - -

Dr. Reader, very brief comment.

DR. READER: Very brief.

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

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

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

MR. CAMBRON: Chair ready for a motion?

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

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

DR. BOTHWELL: Second.

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

MR. APPLEBY: Motion for denial or
postpone?

MR. CAMBRON: Denial.

DR. BOTHWELL: Denial.

CHAIRMAN: Did you have a comment?

MR. JAGOE: Does this go without a
recommendation to the city commission? What's the
process?

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

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

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

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

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

CHAIRMAN: Wouldn't a postponement bring
it back?

MR. ELLIOTT: Brings it back here.

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

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

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

CHAIRMAN: Mr. Cambron, would you like to -

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

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

DR. BOTHWELL: I second his motion.

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

Would you like to make a comment?

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

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

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

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion is denied unanimously.

Next item.

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ITEM 3

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

MR. ELLIOTT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

Condition: No direct vehicular access
to East Second Street shall be permitted.
Findings of Fact:

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

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

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

CHAIRMAN: Is there anybody representing

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the applicant?

MS. THOMAS: Sandra Thomas with Rusher Construction.

(MS. SANDRA THOMAS SWORN BY ATTORNEY.)

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

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

(NO RESPONSE)

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

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

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

MR. APPLEBY: Second.

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

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

Next item, please.

ITEM 4

1016 East 6th Street, 521 Hathaway Street, Portion of 525 and 529 Hathaway Street, portion of 518, 522 and 526 Breckenridge Street
Consider zoning change: From B-4 General Business to I-1 Light Industrial
Applicant: James Gregory Wimsatt

MR. NOFFSINGER: Mr. Chairman, the applicant has asked that this item be postponed until the October meeting of the Planning Commission. You'll need to vote on that item.

CHAIRMAN: Do we have a motion on this?

MR. APPLEBY: Motion to postpone.

CHAIRMAN: Motion to postpone by Mr. Appleby.

MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

RELATED ITEM

ITEM 4A

506 Breckenridge Street
Consider approval of final development plan
Applicant: James Gregory Wimsatt

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

MR. CAMBRON: Make a motion for postponement.

CHAIRMAN: Motion to postpone by Mr. Cambron.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

ITEM 5

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

PLANNING STAFF RECOMMENDATIONS

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

Conditions:

1. Improve/repair existing sidewalks that
currently serve the site;

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

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

Findings of Fact:

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

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

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

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

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant from the audience or for the
MR. ELLIOTT: State your name, please.

MR. CONDON: David Condon.

(MR. CONDON SWORN BY ATTORNEY.)

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

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

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

The Housing Authority about four or five
years ago spent approximately $500,000 in redoing the exterior of the site. So significant changes have occurred in this area, revitalize the residential character of the neighborhood.

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

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

What this proposed use is is a bakery distribution center with a small -- the plan shows a small retail outlet facing on Ninth Street. The restrictions that the Staff has recommended is that the primary vehicular use of the property access via
off of Poplar Street where the truck that comes in from Nashville every morning at 3 or 4:00 in the morning turn in either off of Ninth Street or comes up Poplar from Fifth Street or Fourth Street and turns into a lot and does whatever maneuvering it has to do to get into the loading dock which involves some backing up.

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

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

As I understand the statute, if we allow a zone change only in the event of a proposed unchanged conformance is in conformance with the comprehensive plan. My reading of the plan indicates that it would require a logical extension on the site and the same sort of use that already exist of the plan area. Now,
the significant uses in this area, as I have mentioned already, are essentially residential. The subject lot is presently a vacant lot, but all the other areas in there are residential. On the west side of Poplar Street you have the city park. On the north, on the corner there, at the corner of Eighth and Poplar you have a funeral home, but everything else going all the way over to Walnut is residential. Over to Fifth, Seventh and Fifth Street is now a redeveloped residential area. This is all part of the Baptist town redevelopment area.

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

We see no specified criteria that would
make this zoning change appropriate on this subject property.

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

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

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

The plan also indicates -- and due consideration should be given to the concerns of the residents in the area and that the land use proposal is inappropriate. We feel this change is probably inappropriate.
The statute also allows you to rezone substantial change in the area. The only change in this area that I can tell over time has been the extension of redeveloping the residential property. The subject property, which I understand is B-4, has been B-4, and everything else in that area has been expanded, modernized, the city has ownership programs. There are single-family properties. We have our residential units that we have spent significant sums of money on. So the only change here in the rehabilitation and enhancement of residential on another area and not a change into commercial.

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

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

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

CHAIRMAN: Let me ask you to just sit down
a moment and we will wait for the return of Mr. Cambron and Dr. Bothwell.

MR. HAYDEN: My name is Randy Howard.

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

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

(MR. RANDY HAYDEN SWORN BY ATTORNEY.)

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

CHAIRMAN: You may proceed, Mr. Hayden.

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

In reality what you have is basically one tractor-trailer type truck coming in per day. Yes, it comes in early in the morning. The route that it's going to be taking it will come in off of Parrish Avenue. It will turn left onto Crabtree, down to West Ninth Street. The block before on Maple it will take one block turn down Eighth Street and on to Poplar Street. So it won't be coming through from Fourth Street all the way through the residential. As you look down Ninth Street, the whole purpose of that
development and the redevelopment of Ninth Street was for business purposes. Although there are some residential uses as you drive up and down Ninth Street, there's a number of business type uses.

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

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

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

They will have a retail store there which
will generate bread and pastries for some even the
neighbors that Mr. Condon was talking about. It will
be a minimal impact on the neighborhood as we see it.
I do have one of the representatives of
Flower's Baking here tonight. He'll be more than
happy to address the commission and answer any
questions.

At this point, are there any questions for
me?

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

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

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

MS. STONE: Actually Mr. Howard did.

The current zoning is non-residential in
nature. It is located in a business plan area,
non-essential residential plan area. Many of the
properties that he was referring to are in central residential plan areas, but this property located on the corner of Ninth and Poplar is in a business plan area across from the business industrial plan area. There is industrial zoning across the street. So our recommendation is based on an expansion that is not significant in size and the industry zoning that already exist along Ninth Street.

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

MR. HAYDEN: No.

CHAIRMAN: Mr. Noffsinger.

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

MR. HAYDEN: The alley is not actually physically an alley. It's shown on the plat, but it's never been developed. It's just grass. I don't know if that - -
MR. NOFFSINGER: Would you be willing to install a 6 foot high continuous element; meaning say a stockade privacy fence with one tree per 40 feet along that boundary to provide as a sound barrier and visual barrier?

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

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

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

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

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

Mr. Noffsinger, I'm happy to put a fence in, do what screening needs to be done. We've got to do some pretty extensive landscaping with this project anyway. It's going to be a very appealing building. It's a 4,000 square foot building. We're not talking about a 30,000 square foot warehouse. We want it to look nice. Flower's Baking wants to be a good
neighbor to the community. This is their first step in the door. Their intentions are good.

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

MR. NOFFSINGER: As a condition a minimum

6 foot high privacy fence with one tree per 40 feet.

MR. CAMBRON: Are you ready for a motion?

CHAIRMAN: Wait just a moment, Mr. Cambron.

Would you like to make a final comment.

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

The concern here is with the zone change adjacent to a residential area. Not necessarily what his client or Flower's Baking is wanting to do. That opens it up to anyone in the future. The adjacent lots that remains to the east of this property over to Walnut can be rezoned light industrial. Those uses include major and minor automobile and truck repair. Once this lot is rezoned to light industrial, those uses are committed. Then if Flower's Baking leaves or if they sell, that zoning stays. A significantly more detrimental use can come in. That's why we have to object to this rezoning at this time. We can have
major and minor automobile and truck repairs come in
essentially a residential area. We could have truck
terminals. We could have an ice plant. We could have
light manufacturing. Once the change happens, then
anyone who is a successor and title for the persons
who buy the lot next-door to this, as I believe it's
going to be subdivided in half, this lot, and can
subdivide it and have far more impact on the area.
It's directly adjacent to a residential property on
Eighth Street. The rest of the area on the north side
of West Ninth is residential at this time. We think
it's inappropriate.

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

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

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

If there are no further — yes, sir, you have one further comment?

MR. ELLIOTT: State your name, please.

MR. HOWARD: My name is John Howard.

(MR. JOHN HOWARD SWORN BY ATTORNEY.)

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

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

I own the property east of this lot. I've had a business that's near in that neighborhood. Right now been told to me if this goes through they're going to be very interested in putting this business over on this lot east of this property. As you go
east from this property all way to Walnut Street,
that's all commercial. There's no residential in
there.

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

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

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

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

Am I correct, Gary?

MR. NOFFSINGER: Yes, sir.

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

On which side of the fence, Mr.

Noffsinger? On the inside or the outside?

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

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

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

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

MR. NOFFSINGER: Item 6 has been withdrawn.

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

ZONING CHANGE - COUNTY

ITEM 7

1411, 1431 Chandler Avenue, 6300 Waterfield Drive
Consider zoning change: From R-3MF Multi-Family Residential to R-1C Single Family Residential
Applicant: Wright's Acres, LLC
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PLANNING STAFF RECOMMENDATIONS

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

Conditions:

1. Provide an additional 5' of right-of-way along the KY 405 property frontage; and,
2. No direct access to KY 405. Access shall be limited to Chandler Avenue.

Findings of Fact:

1. The subject property is located in a Future Urban Plan Area, where urban low-density residential uses are appropriate in very-limited locations;
2. The building lot pattern will be urban residential development;
3. All urban services, including sanitary sewer, already exist on-site; and,
4. The applicant's request is an expansion of existing urban low-density residential use onto contiguous land.

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

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CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

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

(NO RESPONSE)

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

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

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

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

RELATED ITEM:

ITEM 7A

Wright's Acres, LLC
Consider approval of major subdivision preliminary plat
Applicant: Wright's Acres, LLC

MR. NOFFSINGER: Mr. Chairman, this Plat

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

CHAIRMAN: Is there anybody here
representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions of the
applicant?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISION

ITEM 8

Shadewood Terrace

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

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

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MS. DIXON: Second.

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

(ALL MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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ITEM 9

5240 Frederica Street, POSTPONED from August 12, 2004 meeting
Consider approval of amended final development plan
Applicant: SITE, Inc.: Katherine Burns (John Burns)

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

CHAIRMAN: Is anybody here representing the applicant?

MS. HENRY: Yes.

MR. ELLIOTT: State your name, please.

MS. HENRY: Kim Henry.

(MS. KIM HENRY SWORN BY ATTORNEY.)

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

CHAIRMAN: Thank you very much.

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Does anybody have any questions of the applicant?
(NO RESPONSE)
CHAIRMAN: If nobody does, the chair is ready for a motion.
MR. JAGOE: Motion to approve.
CHAIRMAN: Motion for approval by Mr. Jagoe.
MR. CAMBRON: Second.
CHAIRMAN: Second by Mr. Cambron. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.
Next item, please.
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MINOR SUBDIVISIONS
ITEM 10
506 Breckenridge Street, 525, 529 Hathaway Street
Consider approval of minor subdivision plat
Applicant: James Gregory Wimsatt, Dorothy Harley
MR. NOFFSINGER: Mr. Chairman, the applicant has asked that this item be postponed until the October meeting. You need to vote on that.
CHAIRMAN: Do we have a motion?
MS. DIXON: Move to postpone.
CHAIRMAN: Motion for postponement by Ms.
Dixon.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 11

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

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: If not does anybody have any questions?

(NO RESPONSE)

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

DR. BOTHWELL: Motion for approval.

CHAIRMAN: Motion for approval by Dr. Bothwell.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 12

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

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

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

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

MS. STONE: Yes. We're eliminating two
lots that had no road frontage at all and attaching
them to a lot with less than the required amount of
road frontage.

CHAIRMAN: Thank you.

Is anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Are there any questions from

the commission or from the audience?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a

motion.

MR. JAGOE: Move to approve.

CHAIRMAN: Motion for approval by Mr.

Jagoe.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. All in

favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 13

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

MR. NOFFSINGER: Mr. Chairman, this plat

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

It does not meet the one acre minimum lot
size requirement and the request is made to allow this
lot to be created and it be a non-buildable lot.

There's a notation on the plat that no building
permits can be issued on this 0.776 acre tract that's
being created because in fact it is undersized.

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

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

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

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

MR. CAMBRON: Do we need to postpone?

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

MR. ELLIOTT: You may want to postpone.

Scott Richmond was going to be here and address it. I don't think he's here.

MR. CAMBRON: I think we should postpone.

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

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

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

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MR. APPLEBY: I make a motion to deny.

DR. BOTHWELL: I second.

CHAIRMAN: Wait. Do you want your question clarified?

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

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

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

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

DR. BOTHWELL: And I second it.

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

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

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DR. BOTHWELL: Yes.

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

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

CHAIRMAN: We're restating the motion.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion for denial passes unanimously.

We're ready for one final motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 99 typewritten pages; and that no signature was requested to the foregoing transcript.

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

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

COMMISSION EXPIRES:
      DECEMBER 19, 2006

COUNTY OF RESIDENCE:
      DAVIESS COUNTY, KENTUCKY

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